

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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GRANTED IN PART: November 16, 2000

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GSBCA 15117-TD

THE WRITING COMPANY,

Appellant,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

Jerrold Sanders, President and CEO of The Writing Company, St. Louis, MO, appearing for Appellant.

Edward N. Ramras, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **BORWICK**, and **GOODMAN**.

**GOODMAN**, Board Judge.

This appeal was filed by The Writing Company by notice of appeal dated September 2, 1999, seeking payment of \$50,219.35. The appeal arises from a contract between appellant and the respondent, Department of the Treasury, Internal Revenue Service (IRS). As set forth below, the claim is granted in part.

## Findings of Fact

1. Appellant was the subcontractor under contract TIRNO-98-C-0041 (the contract) for the rewriting and redesign of IRS computerized notices to taxpayers. The contract was originally awarded on March 3, 1998, as a sole source Section 8(a) letter contract with the Small Business Administration (SBA) as the prime contractor and appellant as the subcontractor. Appeal File, Vol. 1, Exhibit 1.<sup>1</sup>

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<sup>1</sup> The appeal file in this case is designated as follows: Respondent's Initial Submission - Vols. 1-5; Appellant's Initial Submission - Vols. 6-7; Respondent's Submission of Audit Report and Supporting Invoices - Vol. 8.

2. Appellant's president and CEO, Ms. Jerroll Sanders, owns all of the stock of Jireh Consulting and its subsidiary, The Writing Company. Appellant's Response to Board Inquiry (Oct. 31, 2000). Ms. Sanders is designated by the contract as project manager and principal. Appeal File, Vol. 1, Exhibit 1 at 11, 17.

3. The contract contained a pricing provision that reads in relevant part:

The following fixed hourly rates, inclusive of all direct and indirect costs (salaries; fringe benefits; overhead; general and administrative expenses) and profit, are applicable for the entire contract.

Appeal File, Vol. 1, Exhibit 1 at 3. A schedule by labor category followed.

4. The contract incorporated Federal Acquisition Regulation (FAR) clause 52.232-7 (Payments under Time-and-Materials and Labor-Hour Contracts) by reference. Appeal File, Vol.1, Exhibit 1 at 5. Subsection (a)(3) of that clause provides that:

Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

48 CFR 52.232-7 (1997).

5. The contract also contained a line item designated "0010, Material." Appeal File, Vol. 1, Exhibit 1 at 5.

6. The estimated amounts in the contract totaled a not-to-exceed price of \$1,144,538. Appeal File, Vol. 1, Exhibit 1 at 5.

7. The IRS issued a letter to the appellant dated September 1, 1998. The letter read in relevant part:

This letter confirms agreement between The Writing Company and Mr. Rob Wilkerson, Deputy Assistant Commissioner (Customer Service) of the IRS.

The agreement is the result of decisions identifying which of our four design changes, as a result of focus group testing, would or could be incorporated into existing Writing Company notices as required by the IRS in order for the Writing Co. to meet the September 15, 1998 delivery date for Information Systems. With regard to those design changes the parties agreed:

....

e. In order to meet the September 15 delivery date, the contractor is authorized an estimated 350 hours for writers. The labor rate for this overtime will be negotiated upon receipt of a breakdown of the overtime rate but shall not exceed an additional \$7,000 to the contract. The overtime is authorized for the period August 14 through September 15, 1998.

Appeal File, Vol. 7, Exhibit 134.

8. Modification 4 to the contract was signed by appellant, respondent, and the SBA on September 28, 1998. Section B.2 gives pricing for five sub-line items as follows:

SUB LINE ITEM NO.	LABOR CATEGORY	HOURLY RATE
AA	Principal	\$105.00
AB	Writer	\$ 60.00
AC	Technical Director	\$ 60.00
AD	Secretary	\$ 23.50
AE	Writer Overtime*	\$ 70.71

\*Overtime for 8/14-9/21/98 only

Appeal File, Vol. 1, Exhibit 5.

9. By letter dated February 24, 1999, the contract was terminated for the convenience of the Government by the contracting officer. Appeal File, Vol. 4, Exhibit 1.

10. By undated letter from appellant received by respondent on June 8, 1999, appellant requested payment of various unbilled costs, including project manager overtime charges in the amount of \$113,990.62. Appeal File, Vol. 5, Exhibit 21.

11. Attached to the letter was an invoice dated May 5, 1999, entitled "Adjustments,"<sup>2</sup> that contained entries for various amounts, including the following:

Quantity	Description	Unit Price	Extension
1.00	Item No. 0010 Material Direct Cost of Supplies not Billed . . .	6,648.00	6,648.00 <sup>[3]</sup>

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<sup>2</sup> This invoice is referred to as "Invoice 18" in the Defense Contract Audit Agency (DCAA) audit report mentioned in this opinion. Letter from Respondent to the Board (Aug. 3, 2000).

<sup>3</sup> Attached to the invoice were ledger sheets supporting \$6445.99 in costs.

77.06	Item No. 0001AA Overtime Adjustment . . .	157.50	12,136.95 <sup>[4]</sup>
646.69	Item No. 0001AA Overtime Adjustment . . .	157.50	101,853.68
1.00	Item No. 0001A Invoice #11 Underpayment . . .	3,819.42	3,819.42 <sup>[5]</sup>
1.00	Item No. 0001AA Invoice #12 Underpayment . . .	361.69	361.69

12. The Defense Contract Audit Agency (DCAA) conducted an audit of appellant's records with regard to the contract during the week of June 14, 1999, and issued a draft audit report on June 24, 1999, which was transmitted to appellant's business manager. Appellant's Motion to Bring Claim 15117-TD Before the Board, Attachment 9. The DCAA subsequently revised the audit report in part on June 25, 1999. Appeal File, Vol. 8, Exhibit 1.

13. The draft audit report read in relevant part:

[W]e audited The Writing Company costs on public voucher numbers one through eighteen . . . . Voucher no. eighteen brought the cumulative total billed to \$1,024,541.84. . . . The purpose of our audit was to determine the allowability, reasonableness, and allocability of direct costs claimed on public vouchers nos. one through eighteen.

. . . In our opinion the \$1,024,541.84 claimed . . . is overstated. The audited amount for voucher nos. one through eighteen [is] \$905,025.29.

. . . The contractor claimed \$113,990.63 for project manager overtime on voucher no. 18. We verified the overtime incurred to the time sheet and found that they [sic] were in excess of 40 hours per week. However, we found authorization for only writer overtime in the contract. We question the \$113,990.63 in its entirety. Should the contract be modified to allow the overtime hours incurred for this labor category, we noted that the contractor miscalculated the overtime premium applicable to the hours worked on voucher eighteen. It used the premium rate of \$157.50 which included the basic pay rate of \$105 plus the overtime premium of \$52.50. The amount payable should represent only the applicable overtime premium. For example,

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<sup>4</sup> The sum of this number and the following number (\$12,136.95 + \$101,853.68) is \$113,990.63, the amount sought for project manager overtime referenced in the DCAA audit report.

<sup>5</sup> The sum of this number and the following number (\$3819.42 + \$361.69) is \$4181.11, the amount sought by appellant for alleged underpayment of writers.

if overtime is paid at time and a half, the premium amount would be \$52.50 times 723.75 overtime hours or \$37,996.88. We discussed this with the contractor representative, [appellant's business manager], who concurred with our finding that the premium was incorrectly calculated. . . .

The contractor claimed overtime premiums in the amount of \$4,181.11 for writer overtime on voucher no. 18. These dollars were already included in voucher nos. eleven and twelve. We take no exception to the overtime in voucher nos. 11 and 12 which are for writer hours in excess of 40 hours per week.

Appellant's Motion to Bring Claim 15117-TD Before the Board, Attachment 9.

14. Following receipt of the audit report, appellant's business manager wrote a letter dated August 2, 1999, to the contracting officer demanding payment in the amount of \$37,996.88 for project management overtime and \$4181.11 for writer overtime. That letter contained the following statement:

Ms. Sanders performed on this contract in the capacity of Project Manager and not as CEO. Her time was not spent on duties that were those of a CEO; in fact, the [contract] consumed over 80% of her time. Her duties as Project Manager were not unlike those of a "working foreman" (see [29 CFR] 541.115) - a role that she fulfilled at IRS's request, not at the The Writing Company's preference.

Appeal File, Vol. 5, Exhibit 12.

15. By letter dated August 26, 1999, contracting officer Sharon A. Warren stated:

The following is submitted to provide a response to correspondent from [T]he Writing Company dated August 2, 1999. . . .

In the audit report \$119,516.79 was questioned. Of this amount, \$113,990.63 was for overtime for Ms. Jerroll Sanders, President and CEO of [T]he Writing Company. [The contract] authorized overtime for writers only for the period August 14-September 21, 1999[,] as referenced in bilateral modification 0004 Section B.2. . . . Additionally, this section set a negotiated overtime rate for writers at \$70.71 and did not allow for payment of overtime costs for any other classification of employee. The Writing Company was informed in correspondence dated March 13, 1998[,] from the U.S. Small Business Administration . . . to obtain written authorization to perform work outside the scope of the contract.

Based on the specific language of the modification, overtime costs for Ms. Sanders are denied. The audit report questioned additional funds in the amount of \$4,181.11 for overtime. The calculation used to arrive at this cost was based on time and a half rather than the negotiated overtime rate of \$70.71. The request for additional money for overtime is therefore denied.

. . . While the audit report did not take exception to labor costs billed to this contract, this office takes the following exceptions:

Invoice 12 - \$1,423.36 for overtime costs incurred past the cut off date of 9/21/98 per Mod 0004 para B.2.

Invoice 18 - \$6,648 supplies not billed . . . .

The unbilled supply cost of \$6,648.00 cannot be accepted as a direct cost because it has been categorized as an element in your other direct cost.

Appeal File, Vol. 5, Exhibit 6.

16. By letter dated August 31, 1999, John T. Smith, Director, Office of Contract Administration and a contracting officer,<sup>6</sup> wrote to the appellant:

This letter will serve to reaffirm the Government's position concerning your request for additional monies based upon the DCAA Audit Report. Your firm was advised pursuant to the Government exceptions on August 26, 1999, that while the audit report did not take exception to costs billed to the contract that were allocable and allowable, it did stipulate that there were exceptions. These exceptions were overtime costs for the president and CEO, . . . and writer overtime; furthermore, the Contracting Officer took the following exceptions:

Invoice 12 - \$1,423.36 for overtime costs incurred past the cut off date of 9/21/98 per Mod 0004 para B.2.

Invoice 18 - \$6,648.00 supplies not billed. . . .

Appeal File, Vol. 5, Exhibit 4.

17. Appellant filed a notice of appeal dated September 2, 1999, which read in relevant part:

The Writing Company submitted its final invoice, which contained a number of adjustments. These adjustments were reviewed by the auditor during an audit of The Writing Company's records, which was completed on June 24, 1999. The audit revealed that IRS had disallowed items that were clearly in accordance with the Federal Acquisition Regulation (FAR) including

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<sup>6</sup> While Mr. Smith signed this letter as Director, Office of Contract Administration, the record indicates that he is also a contracting officer, as evidenced by appellant's letters addressed to him in that capacity and other correspondence he signed in that capacity. See, e.g., Appeal File, Vol. 7, Exhibit 93 (Letter from John T. Smith to Appellant (May 12, 1999)).

overtime erroneously disallowed by the COTR [contracting officer's technical representative]. In response to the audit, the IRS Contracting Officer verbally agreed to compensate The Writing Company for excess hours worked by the project manager. After the Writing Company filed a claim for reinstatement of the Notice Redesign Contract with the Board of Contract Appeals (GSBCA 15097-TD . . .), the Contracting Officer and her superiors reversed their decision. Subsequently, they denied payment of all remaining adjustments, even those that were clearly authorized by the contract. The Writing Company is appealing to the Board of Contract Appeals to settle a claim for the following amounts: **\$37,966.88** for the project manager's overtime; **\$4,181.11** for Writer overtime premiums that were improperly denied; **\$6,648.00** for supplies not previously invoiced; **\$1,423.36** for overtime hours incorrectly denied by the Contracting Officer's Technical Representative (COTR). This amount totals **\$50,219.35**.

Notice of Appeal at 1-2.

18. Appellant attached to the notice of appeal the letter dated August 31, 1999, from John T. Smith, contracting officer. Notice of Appeal, Attachment 1.

19. On December 3, 1999, appellant filed a pleading in this appeal entitled "Motion to Bring Claim GSBCA 15117-TD Before the Board." The pleading consisted of a narrative motion with twenty-one documentary attachments.

20. On January 8, 2000, appellant filed a pleading entitled "Request for Payment of Charges Outlined in Dispute."<sup>7</sup>

21. On April 13, 2000, respondent filed a pleading entitled "Motion to Dismiss for Lack of Jurisdiction and Response to Appeal/Request for Payment."

22. On August 21, 2000, this Board issued a decision denying respondent's motion to dismiss, finding that claimant had submitted a claim pursuant to the Contract Disputes Act. The Writing Company v. Department of Treasury, GSBCA 15117-TD, 00-1 BCA ¶ 30,840, reconsideration denied, 00-1 BCA ¶ 30,863.

23. On September 21, 2000, the Board held a conference with appellant's representative and respondent's counsel. Appellant's representative requested that the appeal be decided on the written record and was granted leave to submit additional written information. Conference Memorandum (Sept. 12, 2000).

24. Appellant filed a pleading on September 15, 2000, entitled "Additional Submittal." This information consisted of a written statement which read as follows:

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<sup>7</sup> This document contained the caption of another case filed by appellant, but the content of the document referred to the subject matter of the instant appeal.

The attached documents a discussion between the IRS and The Writing Company relating to overtime. It confirms that overtime was needed to accommodate Treasury's and NPR's [National Performance Review's] intervention. Neither Treasury nor NPR was listed in the original contract as part of the review process. When Treasury intervened in the project, its representatives chose to compete The Writing Company's notices against those developed by NPR and Emmerling Post. IRS required The Writing Company to postpone activities it had scheduled for the early phase of the project until Treasury's focus groups were complete. This delay adversely affected The Writing Company's timeline. As such, overtime was required. The Writing Company contends that had Treasury not intervened in the process or had IRS advised The Writing Company of Treasury's and NPR's intended intervention before pricing was concluded, The Writing Company would have budgeted for additional writer and thus would not have required the project manager and other staff to work overtime.

Attached is my federal tax bill to date. It is enormous, thanks to the IRS, which has denied most of my settlement claims without explanation and has refused to pay G&A [general and administrative expenses] for almost 10 months, causing my firm to amass enormous tax and other debts. IRS's actions are malicious, designed to destroy The Writing Company. We contend that since these charges are the result of IRS withholding invoice amounts, project management overtime, and material charges clearly owed, The Writing Company should be compensated.

25. Attached to appellant's pleading of September 15, 2000, was a copy of the IRS letter dated September 1, 1998, and a spreadsheet which apparently is the federal tax bill referenced in appellant's submission.

26. Respondent filed a response on September 21, 2000. The record was then closed.

### Discussion

#### Summary of Appellant's Claim

Appellant in its notice of appeal seeks recovery of four amounts: \$37,966.88 for the project manager's overtime; \$4181.11 for writer overtime premiums that were allegedly improperly denied; \$1423.36 for overtime hours allegedly incorrectly denied by the contracting officer's technical representative; and \$6648 for supplies not previously invoiced. These amounts total \$50,219.35. Finding 17.

In its final submission to the Board, appellant referenced other amounts totaling \$185,661.94, which it alleged are the damages resulting from the IRS withholding the four amounts sought in this appeal, and states that appellant "should be compensated" for these additional amounts. Finding 25. We do not address these additional amounts, as they were not included in the claim in this appeal.



Claim for Project Manager Overtime - \$37,966.88

Appellant seeks \$37,966.88 for uncompensated overtime premium pay for the project manager, Ms. Jerroll Sanders.<sup>8</sup> Respondent does not challenge the number of hours worked by Ms. Sanders, and has paid for those hours at the rate of \$105 per hour, the rate set forth in modification 4 for "Principal." However, respondent denies liability for overtime pay for the project manager. Respondent's Motion to Dismiss for Lack of Jurisdiction and Response to Appeal/Request for Payment (Respondent's Motion) at 4.

We first look to the contract to ascertain whether appellant is entitled to overtime compensation for the project manager. The contract, signed March 3, 1998, incorporated FAR clause 52.232-7 (Payments under Time-and-Materials and Labor-Hour Contracts) by reference. Subsection (a)(3) of that clause provides that:

Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes Clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

Finding 4.

Appellant asserts in its additional submission that overtime was needed to compensate for costs resulting from the intervention of Treasury and NPR, and that this "intervention" was outside the scope of the contract. Appellant has also cited us to the definition of "overtime" as found in FAR 22.103. Appellant's Request for Payment of Charges Outlined in Dispute (Jan. 8, 2000) at 2; see 48 CFR 22.103 (1997). Respondent recognized that appellant was to be compensated for additional effort, and its letter dated September 1, 1998, so indicates. Finding 7.

Overtime rates were negotiated and incorporated into the contract on September 28, 1998, by modification 4. The modification provides for overtime payment for writers only and is limited to the period of August 14 through September 21, 1998. Finding 8. Apparently, negotiations did not result in an agreement to pay overtime for the project manager. There is no evidence in the record that overtime work by appellant's project manager was approved by the contracting officer. Ms. Sanders is designated as the principal for purposes of the contract. Finding 2. The modification language is clear and

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<sup>8</sup> Initially, appellant billed respondent \$113,990.63 for project manager overtime on voucher 18. Finding 11. This was the dollar amount referenced in the DCAA audit report. The amount sought in this claim, \$37,966.88, is the amount referenced in the audit report as due and owing if a determination was made that respondent was obligated to pay the project manager overtime at a time-and-a-half rate. Finding 13.

unambiguous. Overtime is authorized for writers, but not for the principal. We find no entitlement to overtime for the project manager from the plain meaning of the contract.

Appellant attempts to place Ms. Sanders in a category of worker who would be entitled to overtime by statute. The statute at issue is the Fair Labor Standards Act (FLSA), 29 U.S.C. § § 203 et seq. (Supp. IV 1998), which reads in relevant part:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Id. § 207(a)(1).

The provisions of . . . section 207 of this title shall not apply with respect to . . . any employee employed in a bona fide executive, administrative, or professional capacity.

Id. § 213(a)(1).

It is respondent's position that since the project manager, Ms. Sanders, is the appellant's president and CEO, an executive of the company, she is not entitled to overtime pay under the FLSA. Respondent states:

However, Ms. Sanders was not only the project manager (or "Principal" as described in the contract), she is also the president and CEO of the contractor. As such, Ms. Sanders controls appellant's daily operations including hiring, firing, and work allocation of its employees. . . .

[B]eing the president, CEO, principal, or project manager, in and of themselves, are sufficient to exempt Ms. Sanders from coverage under FLSA because they are executive positions.

Respondent's Motion at 4-5.

As president and CEO of appellant, appellant's project manager is clearly an exempt employee pursuant to the FLSA. However, appellant argues that Ms. Sanders' responsibility as project manager at the insistence of the IRS on this contract was that of a "working foreman" as described in 29 CFR 541.115, and she is therefore not an exempt employee under the FLSA. This regulation reads in relevant part:

One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as straw bosses, or gang or group leaders perform the same kind of work as that performed by their subordinates, and also carry on supervisory

functions. Clearly, the work of the same nature as that performed by the employees' subordinates must be counted as nonexempt work and if the amount of such work performed is substantial the exemption does not apply. ("Substantial," as used in this section, means more than 20 percent . . . .)

29 CFR 541.115 (1999).

Respondent replies to this argument:

Respondent does not know the precise ownership structure of The Writing Company, but it is assumed that Ms. Sanders owns a substantial portion of Jireh Consulting, Inc., which does business as [The Writing Company]. An employee who owns at least a 20 percent interest in the enterprise in which she is employed is not subject to the working foreman exception. 29 CFR 541.1(e). Furthermore, under the FLSA, a person cannot be an employer and employee at the same time. If she is the employer, she is liable to persons hired by her for unpaid minimum wages and overtime compensation. If she is an employee, it is the person who employs her who is liable. Maddox v. Jones, 42 F. Supp. 35 (1941, DC Ala.). Here, Ms. Sanders is clearly the employer and is therefore not eligible for overtime payment as a matter of law.

Respondent's Motion at 5.

The relevant regulation reads as follows:

Executive.

The term employee employed in a bona fide executive . . . capacity in section 13(a)(1) of the Act shall mean any employee:

- (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and
- (b) Who customarily and regularly directs the work of two or more other employees therein; and
- (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
- (d) Who customarily and regularly exercises discretionary powers; and
- (e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not

devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: Provided, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week (or \$130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: Provided, That an employee who is compensated on a salary basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

#### 29 CFR 541.1.

Appellant has informed the Board that its project manager, Ms. Jerroll Sanders, owns all of the stock of Jireh Consulting and its subsidiary, The Writing Company. Finding 2. Accordingly, pursuant to the provision in 29 CFR 541.1(e), its project manager does not qualify as a working foreman.

As we find no contractual, statutory or regulatory authority to compensate appellant for the project manager's overtime, this portion of the claim is denied.

#### Overtime Premium for Writers - \$4181.11

Appellant seeks recovery of \$4181.11 for overtime premium for writers. Appellant asserts that it is entitled to \$90 per hour instead of the \$70.71 per hour which respondent allowed for each overtime hour worked by its writers. According to appellant, the basis for this claim is that "the Contracting Officer used a 58.03 percent overtime rate rather than the 89.29 percent agreed upon during contract negotiations." Appellant's Request for Payment of Charges Outlined in Dispute (Jan. 8, 2000) at 3.

There is no evidence in the record that the parties agreed to a rate of \$90 per hour for writer overtime as claimed by appellant. The language of modification 4, executed by appellant's CEO, clearly supports the rate of \$70.71 per hour which respondent asserts is the amount owed. Finding 8. Accordingly, this portion of the claim is denied.

Overtime Denied for Writers - \$1423.36

Appellant claims \$1423.36 for writers' overtime pay incurred after September 21, 1998. Contract modification 4 allowed for payment of overtime worked only during the period of August 14 through September 21, 1998. Finding 8. Appellant has provided no evidence that the overtime which is the subject of this aspect of the claim was authorized by the contracting officer or any other authorized official of the IRS.

There is no evidence in the record to support appellant's claim for writer overtime in the amount sought. This portion of the claim is denied.

Supplies Not Billed - \$6648

Appellant seeks \$6648 for previously unbilled supplies. These costs were billed to the IRS on voucher 18. Finding 11. These costs were within the scope of the audit. The DCAA auditor did not question or otherwise challenge the allowability and allocability of these costs. Finding 13. Subsequent to the DCAA audit, even though the DCAA auditor did not question these costs, the contracting officer took exception to the costs. Findings 15, 16.

The IRS has denied payment for these material costs, contending that they were already billed to IRS as general and administrative expenses (G&A) in previous invoices and that there is insufficient proof that these costs were allocable to the IRS contract. Respondent's Motion at 8. The IRS refusal to pay same, and its reasons for doing so, are contrary to the findings of the DCAA auditor, whose purpose was to "determine the allowability, reasonableness, and allocability of direct costs claimed on public vouchers nos. one through eighteen." Finding 13. Appellant contends that "the auditors verified that the material charges were legitimately attributable to the IRS contract. DCAA deemed the detail . . . provided specific enough to conclude its audit." Also, material costs were included as direct costs as a line item in the contract. Finding 5.

We find appellant's position to have merit. The auditors were charged with the responsibility of determining the allowability, reasonableness, and allocability of the costs they reviewed, and took no exception to these costs. There is no evidence that their conclusion was incorrect. Appellant is entitled to be paid for the supplies which the auditors find allowable and allocable. However, the ledger sheets in the record of this appeal only support \$6445.99, and not \$6648. Finding 11. Accordingly, we find appellant entitled to \$6445.99.

Decision

The appeal is **GRANTED IN PART**. Appellant's claims for project manager's overtime, writer overtime premiums, and overtime hours are denied. Appellant's claim for supplies not previously invoiced is granted in the amount of \$6445.99.

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ALLAN H. GOODMAN  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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ANTHONY S. BORWICK  
Board Judge