



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DENIED:
August 28, 2026

CBCA 8529, 8865

MICHAEL AVRAMIDES ARCHITECTS,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Michael Avramides, Principal of Michael Avramides Architects, New York, NY,
appearing for Appellant.

Timothy M. Saffles, Office of General Counsel, Department of Veterans Affairs,
Redwood, CA, counsel for Respondent.

Before Board Judges **SHERIDAN, SULLIVAN, and O'ROURKE.**

SULLIVAN, Board Judge.

Michael Avramides Architects (MAA) entered into an architect-engineering (A/E) services contract with the Department of Veterans Affairs (VA). During the construction phase of the contract, VA directed MAA to undertake reviews of the construction contractor's monthly critical path method (CPM) schedules. MAA objected that the requested reviews were outside the scope of its contract and appealed the contracting officer's determination on this issue to the Board. VA filed a motion for summary judgment, seeking a decision that the requirement to review the schedules is within the scope of MAA's contract. Because we cannot find that the plain meaning of the term "schedules" in the

relevant provision includes monthly CPM construction schedules, we deny VA's motion for summary judgment.

Background

I. Contract and Relevant Terms

In March 2020, VA entered into the contract with MAA for A/E services for either the design of a new sterile processing service facility or the renovation of the existing facility. Appeal File, Exhibit 6 at 1, 2.¹ The contract provided for two periods—the design period and the construction services period. *Id.* at 6. In January 2025, VA exercised the option for MAA to perform construction services. Exhibit 16.

The focus of the parties' dispute is the meaning of the word "schedules" in special provision (SP)-27, which required MAA to review shop drawings and submittals during the construction period:

SP-27 SHOP DRAWINGS, SUBMITTALS, ETC.

(a) The A-E shall check the contractor's shop drawings and detail drawings, schedules, descriptive literature, and samples, and review the color, texture, and suitability of materials for conformity with the contract documents and recommend approval, disapproval, or other suitable disposition. He/she shall evaluate the submittals with reference to any companion submittals that constitute a system. When necessary, the A-E will, through the Contracting Officer's Representative, request the Contractor to submit related components of a system before action on a single component. Should this procedure be inappropriate the A-E shall review all prior submittals for related components of the system before acting on a single component. The A-E shall notify the Contracting Officer's Representative, in writing, of any and all deviations from the requirements of the contract documents that he/she has found in the Contractor's submittals.

(b) Master Specification Section S, "Samples and Shop Drawings", describes the procedures for contractors to follow in submitting samples, shop drawings, etc., for approval. See [contract procedure (CP)]-7.

¹ All exhibits are found in the appeal file unless otherwise noted. Bates numbers added by the parties are cited for unnumbered exhibits.

Exhibit 6 at 29. MAA was also to interpret the contract documents:

When requested by the Contracting Officer, the A-E shall interpret the contract documents and recommend any actions he/she deem suitable for the satisfactory prosecution of the construction work. The A-E shall prepare any supplemental drawings or other documents that may be required to clarify or supplement the contract documents.

Id. (SP-26 Construction Period Responsibilities). The statement of work requires MAA to respond to requests for information (RFIs) and review the construction contractor's submittals. Exhibit 7 at 14. "The A/E will be required to review the contract submittals for adherence to contract requirements and then forward their recommendation of approval/disapproval to the VA Contracting Officer within [seven] calendar days." *Id.*

The contract does not define the term schedules. MAA defines "schedules" in the context of SP-27 as "the types of schedules that architects typically include in construction documents—things like door schedules, hardware schedules, equipment schedules, and finish schedules." Notice of Appeal (CBCA 8529) at 3. VA agrees that this definition is one of the definitions of the term "schedules." Respondent's Statement of Undisputed Material Facts ¶¶ 37, 97²; *see also* Master Construction Specifications, Program Guide PG-18-1, 09 06 00 Schedule for Finishes, found at vatilms.va.gov/vatilms/reports/PG-18-1%20Master%20Construction%20Specifications/Finishes (last visited Aug. 25, 2026). Although the term "contract documents" is also not defined, the contract describes the requirements for submitting "contract documents" and lists drawings, specifications, and the submittals spreadsheet as the documents to be submitted. Exhibit 8 at 204, 209. The submittals spreadsheet in the construction contract includes a single line for the submission of the "project schedule" by the construction contractor. Respondent's Exhibit 24 at 977.

MAA's contract contains other references to "schedule" or "schedules." Pursuant to SP-18, Project Phasing, MAA was required, as part of the design services, to "assist the Contracting Officer in coordinating the development of a CPM (Critical Path Method) network for the construction of the project. The CPM network shall provide a phasing schedule." Exhibit 6 at 27. MAA was also required to "establish a preliminary construction schedule." Exhibit 7 at 9. MAA was required to provide iterations of both documents,

² VA cites to Program Guide (PG) 18-15 as support for this definition. Respondent's Statement of Undisputed Facts ¶ 37. MAA was required to comply with the requirements of this guide in preparing its design. Exhibit 8 at 202-03 (design submission requirements).

referred to as construction schedules and phasing plans, at the design reviews. *Id.* at 10-13. The contract also required MAA to deliver a “Level II schedule” as part of the contract documents. Exhibit 8 at 209. VA provided, as an attachment to its motion, a VA guide that describes how MAA is to assemble these schedule documents. Respondent’s Motion for Summary Judgment, Attachment 2 (Critical Path Method design manual (Dec. 2012)). The VA guide does not state that the A-E is required to evaluate the construction contractor’s monthly schedules against the preliminary schedule.

Both parties provided extrinsic evidence. VA provided treatises and training guides that detail the role of the A/E contractor in reviewing construction schedules. Respondent’s Motion for Summary Judgment, Attachments 1-3. MAA’s principal submitted a declaration in which he explained that he had performed A/E services for VA for nine years on twelve prior projects. Appellant’s Opposition to Respondent’s Motion for Summary Judgment, Exhibit 12 ¶¶ 1-3. According to MAA’s principal, MAA’s contracts for those projects contained the same or similar provisions to SP-26 and SP-27. *Id.* ¶ 3. MAA did not provide the text of these same or similar provisions. On those projects, the term “schedules” was “limited to **design schedules and drawing-based tables**,” and MAA was required to provide “planning-level phasing consistent with VA’s stated construction duration.” *Id.* ¶ 4. MAA’s principal further declared that, on these previous projects, his firm was not asked to review the contractor’s CPM construction schedules. *Id.* ¶ 5. These reviews were conducted by others. *Id.* Finally, MAA’s principal explained that his firm was currently providing construction services on another project with the VA, pursuant to a contract with “substantially similar” language to SP-27, and the reviews of “schedules” on that contract were limited to design schedules, not the construction contractor’s CPM schedule. *Id.* ¶ 12. VA did not respond to this evidence.³ The contracting officer, in response to an email from MAA’s principal, stated that “VA does not have the skill or manpower (nor has it ever) to do schedule reviews.” Exhibit 17 at 333.

II. Events Leading to This Dispute

According to MAA, the VA contract specialist initially conducted the reviews of the construction contractor’s schedules. Exhibit 12 ¶ 6. When the contract specialist left the project, MAA’s principal was informed that “VA no longer had this internal scheduling resource” and that MAA would have to conduct the schedule reviews. *Id.* ¶ 8. MAA challenged this direction and requested a contracting officer’s determination. Exhibit 17.

³ VA chose not to file a reply to MAA’s response to VA’s motion for summary judgment.

The contracting officer issued a decision, affirming VA's interpretation that "schedules" in SP-27 includes the requirement to review monthly construction schedules. Exhibit 18 at 2.

MAA appealed the contracting officer's final decision related to the interpretation of the contract. Notice of Appeal (July 30, 2025) (docketed as CBCA 8529). Upon review of the record in response to VA's motion for summary judgment, the Board noted that, although MAA sought to recover the costs of the monthly schedule reviews, MAA's claim did not identify a sum certain. Following a conference with the parties convened by the Board, MAA submitted a new claim to the contracting officer, seeking to recover \$39,450.84 for costs incurred to conduct the CPM schedule reviews. Notice of Appeal (Apr. 13, 2026). After the contracting officer denied the claim, MAA filed its second appeal. *Id.* The second appeal was docketed as CBCA 8865, and the Board consolidated the two appeals. Order (Apr. 27, 2026).

Discussion

To resolve the parties' dispute, we must ascertain the meaning of the word "schedules" in SP-27. We must "give the words of the agreement their ordinary meaning unless the parties mutually intended and agreed to an alternative meaning." *Harris v. Department of Veterans Affairs*, 142 F.3d 1463, 1467 (Fed. Cir. 1998). We may use a dictionary to determine the "ordinary and commonly accepted meaning." *A-Son's Construction, Inc. v. Department of Housing and Urban Development*, CBCA 3636, et al., 15-1 BCA ¶ 36,089, at 176,209 (quoting *Hol-Gar Manufacturing Corp. v. United States*, 351 F.2d 972, 976 (Ct. Cl. 1965)). The dictionary provides three definitions of schedule, the first as a list or catalog and the third as a plan for a project:

1. A list, catalog, or inventory of details, often as an explanatory supplement to a will, bill of sale, deed, etc.
2. A list of times or recurring events, projected operations, arriving and departing trains, etc.; a timetable.
3. A timed plan for a procedure or project.

Schedule, Webster's New Twentieth Century Dictionary 1619 (2d ed. 1976). The first definition accords with MAA's proffered interpretation, which VA agrees is one definition of the term schedule as used in VA construction contracts. Respondent's Statement of Undisputed Material Facts ¶¶ 37, 97. The third definition accords with VA's proffered interpretation.

We next look to how the term is used within SP-27. "[W]e must give a reasonable meaning to the questioned language within the context of the contract when read as a whole,

giving effect to all its provisions.” *Barnes Electric Co.*, ASBCA 48300, 96-2 BCA ¶ 28,528, at 142,460. SP-27 requires the A/E to “check” the construction contractor’s submittals, which includes shop drawings, details drawings, schedules, descriptive literature, and samples, and “review the color, texture, and suitability of materials for conformity with the contract documents.” If “schedules” in this sentence means hardware or finish schedules, it makes sense that MAA would check these against the specifications and drawings to make sure that the items that the construction contractor is sourcing match the requirements of MAA’s design. It is not clear how MAA would review the color, texture, and suitability of a monthly construction schedule. While the contract between MAA and VA requires MAA to create a preliminary construction schedule and a Level II schedule is among the contract documents, the contract refers to these schedules as construction or phasing schedules. However, the list of submittals that MAA prepared and was charged to review included an entry for construction schedule.

In the contract, the term “schedules” is ambiguous. An ambiguity exists when a contract is susceptible to more than one reasonable interpretation. *E.g.*, *E.L. Hamm & Associates, Inc. v. England*, 379 F.3d 1334, 1341-42 (Fed. Cir. 2004). To establish that a contract term is ambiguous, it is not enough that the parties differ in their respective interpretations of a contract term; rather, both interpretations must be reasonable. *Metric Constructors, Inc. v. National Aeronautics & Space Administration*, 169 F.3d 747, 751 (Fed. Cir. 1999). Because both interpretations are supported by the dictionary definition, and because “schedules” is used both ways in the contract, the parties’ proposed, distinct interpretations are reasonable and, therefore, the term “schedules” as used in the contract is ambiguous. *See id.*

To resolve this ambiguity, we may turn to extrinsic evidence “to assist in discerning the parties’ intent and to determine whether there is truly an ambiguity.” *A-Sons Construction*, 15-1 BCA at 176,211 (citing *Metropolitan Area Transit, Inc. v. Nicholson*, 463 F.3d 1256, 1260 (Fed. Cir. 2006)). VA offered treatises and training guides that suggest the A/E is usually required to review construction schedules. MAA provided a declaration that details a course of dealing in previous VA contracts. Evidence of a course of dealing may aid in interpreting a term “where parties have expressly or implicitly interpreted ‘the provisions of a similar, *previously performed* contract in a certain manner.’” *AT&T Technical Services Co. v. Department of Veterans Affairs*, CBCA 6171, 19-1 BCA ¶ 37,324, at 181,540 (quoting John Cibinic, Jr., James F. Nagle & Ralph C. Nash, Jr., *Administration of Government Contracts* 199 (5th ed. 2016)). According to MAA, the parties have previously acted in accordance with MAA’s interpretation, as MAA has not been asked to review monthly construction schedules for contracts with the same or similar terms to SP-27, the term upon which VA relies in requiring MAA to conduct the schedule reviews. While we find the declaration of MAA’s principal might be persuasive, we believe it necessary to

review the prior contract provisions before resolving the issue. Whether the provisions are the same or similar is a matter of contract interpretation, reserved for the Board, rather than a matter on which we can accept MAA's representation. *See Agency Construction Corp.*, VABCA 4559, et al., 96-2 BCA ¶ 28,611, at 142,827. Moreover, while VA did not respond to MAA's evidence, there is evidence that VA has not conducted these reviews in the past. While that fact is not dispositive—another entity may have been charged with conducting the reviews—we believe that further evidence on prior dealings will assist us in determining how the parties have interpreted the term in the past. “When, as here, the contract language is ambiguous, the parties’ own course of performance is highly relevant to contract interpretation.” *Metropolitan Area Transit*, 463 F.3d at 1260. We will conduct a further inquiry into the parties’ past dealings to resolve this matter.

VA urges, if we find the term ambiguous, that we find the ambiguity to be patent and construe it against MAA. Because we must still determine whether the meaning of the term can be determined from the prior course of dealing, we do not decide this argument now. Only if we decide, after considering the further extrinsic evidence, that the term remains ambiguous, will we need to determine whether that ambiguity was latent or patent. *A-Sons Construction*, 15-1 BCA at 176,213.

Decision

VA's motion for summary judgment is **DENIED**. The Board will issue a separate order for further proceedings.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

We concur:

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE
Board Judge