

ELEVEN RULES OF CONTRACT INTERPRETATION

When parties sign a contract they think they agree on all of its terms. But what do you do when you find out that the contracting officer or engineer do not agree with your interpretation of the contract's terms and want you to perform in a way that is going to increase your costs or decrease your profit? Thankfully there are rules to solve this problem.

FEDERAL CONTRACT INTERPRETATION RULES

1. Give meaning to all parts. A contract must be read as a single harmonious whole to give meaning to all parts. That is, an interpretation which conflicts with other parts of the contract or makes some parts of the contract meaningless will not be used to one that gives meaning to all of its parts.
2. Ordinary meaning of language is given to words *unless* it can be shown a different or unusual meaning was intended.
3. Technical terms and words are given their technical meaning *unless* it can be shown a different meaning was intended.
4. A reasonable and logical interpretation is favored over one that is strained or produces an impractical or unjust result.
5. The circumstances surrounding execution of a contract, such as questions and answers before signing, can be considered. There is a rule of evidence (parole evidence rule) that prevents oral (verbal) statements from changing the terms of a written contract. However, oral statements can be used to explain what the written contract means. If contract language is unclear, oral statements may clarify it; but if the contract language is clear then oral statements cannot give it another meaning.
6. The purpose of a contract can be considered. This is related to the "give meaning to all parts" rule. For instance, if you have a contract for renovation of housing and the purpose is to give a new appearance, a conflict over whether the contract requires all interior wall surfaces to receive a finish coat of paint or not, may be resolved by determining whether the units will have a new appearance if the wall is left unpainted.
7. A party is bound to the interpretation of the other party to a contract if it had knowledge of the other party's interpretation before signing the contract. Thus, clarification requests and answers before bidding can be important.

8. Custom and usage of industry or trade can be used where the contract is silent on an issue or the contract terms are ambiguous. Custom and usage may also show that language is clear and unambiguous given its normal meaning. Custom and usage cannot change language that is clear.
9. Interpretations of the parties before there was a dispute are entitled to great weight. This may be the strongest factor because there is some objectivity about it. This is also sometimes known as the "contemporaneous interpretation rule", because the earlier interpretation is often contemporaneous with contract execution. However, it needn't be. All that is required is that at some earlier point both parties interpreted the contract in the same way. The prior interpretation can be shown many ways but the usual ones are execution of a contract modification to pay for work the government later claims to be required by the contract, a course of conduct of the parties in performance, or acquiescence to the other party's position that work was or was not required.
10. Order of precedence clauses. These make one part of the contract prevail over another in case of conflict, i.e., specifications prevail over drawings, detail drawings prevail over general drawings. These are binding on the parties unless application would create conflict or prevent compliance with the overall objective of the contract.
11. *Contra proferentum*. Finally, if the conflict or ambiguity cannot be resolved by applying any of these rules, the interpretation of the party who did not draft the questioned provision will prevail. This is based on the idea that if the person who drafted the contract had done a better job of writing the contract there would be no question about its meaning. Because the government usually drafts the contract, this rule is usually applied to give the contractor's interpretation preference.