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CDA Statute Of Limitation Construct Crystallizes Further

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Law360, New York (June 18, 2014, 10:22 AM ET) -- The Armed Services Board of Contract Appeals recently issued yet another decision finding a government claim void because it was untimely under the Contract Disputes Act statute of limitations. Laguna Construction Co. Inc., ASBCA No. 58569, 14-1 BCA. The case is important because it addresses another form of potential liability (reasonableness of subcontractor costs) and continues to cement the construct that the knowledge standard under the statute of limitations is one of objectivity, not absolute, subjective knowledge.

There have been a number of decisions in which the Court of Federal Claims and the Armed Services Board of Contract Appeals were establishing law and precedent in relation to the CDA's relatively nascent statute of limitations.[1] Because of the running of the statute, the court and board had found a number of government claims against contractors to be invalid: The government had issued claims more than six years after the government knew, or had reason to know, the basis for its claims. These decisions are immensely beneficial to government contractors, especially in light of the Defense Contract Audit Agency's massive audit backlog.

The government consistently argues that it does not, indeed cannot, know the basis for its claim until the DCAA issues its audit report setting forth the precise nature and extent of the claim. The court and board have denied this argument. See Raytheon Co. v. United States, 104 Fed. Cl. 327, aff'd on reconsideration, 105 Fed. Cl. 351 (2012); Raytheon Missile Sys., ASBCA No. 58011, 13-1 BCA 35241.

The board has denied the argument again in Laguna Construction Co. Inc., ASBCA No. 58569, 14-1 BCA. That case involved a claim for costs associated with two subcontracts awarded without adequate price competition and without determining whether the awarded prices were reasonable.

In December 2005 and February 2006, the DCAA issued audit reports identifying deficiencies in Laguna's subcontractor management system. The reports, however, did not set forth any costs for the government to recover and did not identify the two subcontractors that formed the basis for the government's later claim. Not until 2011 did the DCAA issue a "Notice of Contract Costs Suspended and/or Disapproved," disapproving $2,383,370 in costs and associated G&A relating to the two subcontractors. The government argued that its claim did not accrue — and the statute of limitations did not begin running — until that 2011 notice.

Judge Jack Delman rejected this argument and found that the claim accrued, at the latest, when the DCAA identified deficiencies in Laguna's subcontractor management system in February 2006. Critically, Judge Delman states that the claim could have accrued before the February 2006 audit report, but he did not have to address that question because, notwithstanding, the claim was untimely.[2] Thus, Judge Delman has reinforced the fact that DCAA audit reports are not central to the statute of limitations analysis, and claims often accrue far in advance of an audit report. Laguna slip op. at 6 (quoting Raytheon Missile Systems, supra: "events fixing liability should have been known when they occurred unless they can be reasonably found to have been either concealed or 'inherently unknowable' at that time.").

Moreover, Judge Delman's reference to the possibility that the claim could have accrued even earlier than the initial audit report may have been a nod of clarification to Boeing Co., ASBCA No. 57490, 12-1 BCA 34916, where the board listed a number of events, including a DCAA audit report, all of which were outside the statute of limitations window. The government had relied on Boeing to suggest that the statute of limitations does not begin to run until DCAA issues its audit report. The audit report, however, was only one of the many events that put the government on notice of its claim in that case.

Furthermore, the board concluded in Laguna that general information about the substantive issue of liability is sufficient to establish the knowledge requirement. Although the DCAA had not identified the particular subcontracts in its 2005 and 2006 reports, the board found that "irrelevant," because the 32 subcontracts and $147,701,411 of contract costs DCAA reviewed "presumably was a significantly large sample upon which to support its findings." Slip op. at 6. This reinforces the concept that knowledge or constructive knowledge of a potential claim is what established claim accrual. See Raytheon, 105 Fed. Cl. 351 at 353.

Laguna is also noteworthy because it reiterates that "[t]he government, as proponent of [the Board's] jurisdiction here, bears the burden of proving the facts sufficient to support [the Board's] jurisdiction." In Lockheed Martin Corp., ASBCA No. 57525, 12-1 BCA 35,017, which Judge Delman penned, the decision included language upon which the government consistently relied for the proposition that the contractor bears the burden of proof that the government's claim was untimely. In Raytheon Missile Sys., the board rejected the government's interpretation of Lockheed, and in Laguna, Judge Delman cited Raytheon Missile Sys. for the burden standard; thus, confirming the meaning of Lockheed.

Laguna demonstrates that case law addressing the CDA's statute of limitations is crystallizing and the court and board are applying the principles consistently.

[1] The statute of limitations only applies to contracts awarded after October 1, 1995. FAR 33.206(a); 60 Fed. Reg. 48224 (Sept. 18, 1995).
[2] See footnote 3: "Given that the government's claim of 17 December 2012 is barred based upon the date of claim accrual of 9 February 2006, we need not address whether the claim accrued even earlier..."

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