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¶ 168 FEATURE COMMENT: Olé Olé Olé Olé—It's Time For The First Half Of 2026 CDA Case Law Replay—Part 1

Taking inspiration from the 2026 FIFA World Cup captivating sports fans across North America, we present a highlight reel of Contract Disputes Act decisions from the first half of the year. Much like the matches being played, cases from the Boards of Contract Appeals, the Court of Federal Claims, and the Federal Circuit featured dramatic finishes, unexpected upsets, controversial calls, and hard-fought victories. In this biannual update, we recap the decisions that made the biggest impact on the Government contracts field of play. Whether they set game-changing precedent or simply reinforced longstanding principles, these cases offer important guidance for anyone suiting up to compete in the Government contracts arena.

Tournament Eligibility (Subcontractor Claims Need a Sponsor)—Not every team that wants to compete in the World Cup gets a spot in the tournament. Subcontractors, which lack privity with the Government, face a similar hurdle under the CDA and ordinarily cannot bring CDA claims in their own right. Instead, they must "qualify" through the prime contractor, which must sponsor the claim and present it to the Government on the subcontractor's behalf. Three decisions from the first half of 2026 underscore that, like a team that fails to qualify for the tournament, a subcontractor that fails to follow the proper process to satisfy the CDA's jurisdictional prerequisites may find itself eliminated from the litigation.

The subcontractor in *Racer Mach. Int'l* ran afoul of this principle and was dismissed. ASBCA 64165, 2026 WL 790563 (Feb. 27, 2026). Under the reciprocal-procurement arrangement between the U.S. and Canada, the Canadian Commercial Corporation (CCC) contracts with U.S. defense agencies and then subcontracts the work to Canadian entities. A Defense Logistics Agency component awarded CCC a contract, and CCC subcontracted 100 percent of the work to Racer. After performance issues led to a termination for default, Racer appealed the termination in its own name. The Government moved to dismiss, arguing that Racer, as a subcontractor, lacked privity of contract with the Government. Although CCC subsequently submitted a letter supporting the appeal and attached a complaint, the Armed Services Board of Contract Appeals agreed that Racer itself lacked standing and dismissed it from the case.

Although CCC had submitted its letter after the 90-day appeal deadline, the Board considered whether CCC's letter should be considered its own appeal. Specifically, because the contracting officer had addressed the final decision to both Racer and CCC and declared both in default, the Board found that the final decision could reasonably be read as instructing Racer that it (or "you"), as the defaulting party that was performing the work, was the party entitled to appeal. The Board held this constituted "an erroneous and misleading notification" of the appeal rights under 41 USCA § 7103(e), which requires the Government to give the contractor adequate information to make an informed choice about whether and when to appeal. Because CCC showed that it detrimentally relied on the flawed notice (i.e., it was prepared to pursue the appeal but held off due to the defective notice), the Board found the defective notice prejudicial, which forestalled any running of the 90-day appeal clock. The Board thus treated CCC's submission as its own timely notice of appeal and substituted CCC as the appellant. While the officials found Racer not fit to play due to lack of privity, the Board permitted a substitution.

In the appeal of *The Haskell Co.*, ASBCA 64380, 64381, 26-1 BCA ¶ 39,051 (May 5, 2026), the Board allowed a sponsored subcontractor claim to proceed despite some procedural missteps that were not serious enough to disqualify the player (contractor) from the match (litigation). The Navy awarded a contract to the Haskell Co., which subsequently subcontracted certain mechanical-system design and construction work to ENFRA. After conferring with Haskell regarding whether it would "support a pass-through claim," ENFRA submitted a self-titled "pass-through sponsored claim" to the Navy. The claim included two certifications: one signed by Haskell, asserting it was "acting as a conduit on [ENFRA's] behalf" and had "no reason to believe that their cost figures and delay estimates are incorrect"; and a second certification signed by ENFRA that mirrored the CDA's statutory certification language. After initially questioning whether the claim had been properly presented by the prime contractor, the CO issued a final decision addressed to Haskell denying the claim on the merits. When ENFRA appealed, copying Haskell, the Navy moved to dismiss, arguing ENFRA lacked privity and the claim lacked a valid certification. The Board denied both arguments. On sponsorship, it found "ample evidence" that Haskell had sponsored the claim and continued that sponsorship throughout the appeal. Haskell had conferred with ENFRA before submission, expressly identified itself as ENFRA's conduit, and remained involved after the CO issued the final decision. In other words, the prime contractor had done enough to qualify ENFRA for the CDA tournament (appeal). Turning to certification, the Board concluded that although Haskell's certification deviated from the CDA's prescribed language and ENFRA's certification was executed by the subcontractor, the documents together demonstrated a clear intent to certify the claims. Relying on *DAI Global, LLC v. Admin'r of the U.S. Agency for Int'l Dev.*, 945 F.3d 1196 (Fed. Cir. 2019); 62 GC ¶ 5, the ASBCA concluded that the defects were curable under 41 USCA § 7103(b)(3).

The subcontractor fared far worse in *Dunbar-Brown v. U.S.*, 2026 WL 820673 (Fed. Cl. Mar. 23, 2026), where the COFC granted the Government's motion to dismiss for lack of subject matter jurisdiction. The Army had awarded TechTrans International (TTI) a contract to support its Building Strong and Resilient Teams program, which required TTI to provide childcare services at program events. TTI subcontracted that work to On-Site Childcare Solutions LLC (OSC), owned and operated by the plaintiff, Sabrina Dunbar-Brown. The arrangement lasted only a few months before the relationship between TTI and OSC soured and TTI removed OSC from the project. Dunbar-Brown responded by filing suit in the COFC, initially characterizing her case as a bid protest and later invoking the CDA and seeking damages for lost income, lost business opportunities, consequential damages, and emotional distress. The Court quickly blew the whistle. As a subcontractor, OSC lacked privity of contract with the Government and therefore could not pursue a CDA claim directly against the U.S. Relying on Federal Circuit precedent, the Court observed that because finding a subcontractor in privity with the Government risks judicial expansion of Congress' waiver of sovereign immunity, the court strictly construes the CDA's privity requirement. Id. at 3 (citing *Cienega Gardens v. U.S.*, 194 F.3d 1231, 1239 (Fed. Cir. 1998)). The plaintiff nevertheless insisted that she had privity grounded on an agency theory, which the Court observed required Dunbar-Brown to prove three elements: (1) the prime contractor was acting as a purchasing agent for the Government; (2) the agency relationship between the Government and prime was established by clear contractual consent; and (3) the contract stated the Government would be directly liable to the vendors for the purchase price. Because the TTI prime contract on its face did not support the second or third element, Dunbar-Brown could not establish privity as a subcontractor. Finally, if she could establish privity (which she could not), she failed to present her claim to the CO for a final decision, a prerequisite to seeking relief in the COFC. The Tucker Act also required dismissal of the plaintiff's claims for emotional distress and other tort-based damages because the Court's jurisdiction does not cover matters "sounding in tort." 28 USCA § 1491(a)(1).

No Contract, No Kickoff—An express or implied contract entered into by an executive agency for, among other things, the procurement of goods or services is foundational to bringing a valid CDA claim. 41 USCA § 7102. Without a valid agreement, express or implied, there is no kickoff, no match, and no path to recovery under the CDA. In *Futures, Inc.*, ASBCA 61566, 26-1 BCA ¶ 39,041 (Apr. 16, 2026), the Board reinforced this fundamental principle.

Futures provided online employment and transition-assistance services to Army personnel for more than two years while attempting to secure a formal contract. When no contract materialized, Futures sought compensation for the services it had voluntarily provided. Without alleging who made the contract, when it was made, and what terms were agreed upon, Futures raised several alternative theories for recovery: it had an express oral contract with the Army or an implied-in-fact contract; Army contracting officials or the Army "institutionally" ratified the unwritten contract; or it would be unfair for the Army to benefit from Futures' uncompensated work. The ASBCA found none of Futures' arguments persuasive and denied the appeal. No express or implied contract existed, as "the most basic of terms were never agreed upon," "neither party actually believed there to be an agreement, indicating there was no final meeting of the minds," and "nobody with any authority to bind the Army was present" at the alleged meeting. Neither did the Board find the Army in any way ratified the unspecified contract with Futures, emphasizing that "[s]ilence in and of itself is not sufficient to establish demonstrated acceptance of the contract" by a CO. The Board concluded that Futures was effectively attempting to "retroactively apply the never-awarded contract" to services it voluntarily provided "in the hope or expectation of obtaining the later contract." Finally, the Board lacked jurisdiction over any claim based on a contract implied-in-law, and Futures had volunteered the services; there was no agreement to pay. Hopeful expectations are not enough to recover against the Government under the CDA, just as such expectations do not guarantee a World Cup win. Before a contractor can advance in CDA litigation, it must first establish that an authorized Government representative actually kicked off the match by entering into a valid contract.

Staying in Bounds (Jurisdiction)—Even the best attack goes nowhere if the ball has already crossed the touchline. Jurisdiction serves a similar function under the CDA, defining the boundaries of a tribunal's authority. These three decisions examine where those jurisdictional lines are drawn—and what happens when a claim falls outside them.

In *DSME Constr. Co., Ltd.*, ASBCA 63878, 26-1 BCA ¶ 39,044 (Apr. 20, 2026); 68 GC ¶ 145, the contractor came perilously close to being ruled out of bounds. Rather than directly appealing its termination for default—which, as a Government claim, is immediately appealable—the contractor submitted a certified claim asking the CO to convert the termination to one for convenience and to pay for completed work that had never been invoiced. The CO issued a final decision denying the contractor's claim for conversion and money seven days after the 90-day period in which the contractor could have appealed the termination for default, and the contractor appealed 85 days after receipt of that final decision. Given the above facts, the Board asked the parties to brief the issue of the Board's jurisdiction. Unsurprisingly, the contractor argued the Board had jurisdiction, while the Government disagreed. The ASBCA ruled that it had jurisdiction, on the ground that by entertaining the contractor's claim and issuing a new decision, that final decision "effectively reconsiders" the original termination decision, restarting the appeal clock. In soccer terms, the CO effectively put the ball back into play, giving the contractor a fresh opportunity to appeal. The ASBCA found no valid reason to excuse the contractor's default but required the Government to pay the contractor the amounts the Government had admitted were outstanding, with interest, rejecting the Government's contention that no interest was due given the contractor had never submitted an invoice, because the contractor's certified claim plainly requested payment of those amounts.

In *AOC Connect, LLC v. Dep't of the Interior*, CBCA 8696, 2026 WL 1191895 (Apr. 28, 2026), the referee—erm, Civilian Board of Contract Appeals—found the appeal resulted from a "false start," or in CDA terms, an invalid claim. The contractor submitted a request for equitable adjustment related to increased costs it claimed to have incurred in relation to a stop work order that was later lifted. The Department of the Interior (DOI) directed the contractor to submit written authority and factual support for the requested costs, to which the contractor responded by email attaching the task order transition plan and stated that its Information Technology team would "condense the files supporting the specific orders." DOI responded bluntly: "It is not clear what the data submission is for. As such, the Government is denying whatever the submission is." The contractor later appealed to the Board, identifying this email as the underlying claim and the DOI response as the CO's final decision. The Board disagreed, concluding that the contractor failed to present a valid CDA claim to the CO. Because the contractor sought more than $100,000, the CDA required any written claim to include a certification and request for a final decision. Neither was present in the email on which the contractor sought to rely. Without those essential elements, the email could not qualify as a claim under the CDA. Nor could DOI's response salvage the defect. Even assuming DOI's response qualified as a CO's final decision, the Board explained that a CO cannot put the ball in play, or create jurisdiction where none otherwise exists: "[T]he CDA 'denies the contracting officer the authority to issue a decision' on a contractor's request for monetary compensation 'until a contract "claim" in writing has been properly submitted to him for a decision.' " The CBCA accordingly dismissed the appeal for lack of jurisdiction.

In *Penna Grp., LLC*, ASBCA 61708-ADR, 61641-ADR, 61642-ADR, 26-1 BCA ¶ 39,003 (Feb. 20, 2026), the Board found the parties were attempting to play the match in the wrong stadium. Penna and the U.S. Army Corps of Engineers had settled three pending appeals, which the Board dismissed with prejudice. Three months later, a receiver in Texas state court filed a motion to vacate the settlement and reopen the appeal, on the basis that the individual who negotiated and signed the settlement agreement did not have authority to do so and did not disclose the negotiations to the receiver, rendering the settlement void under Texas law. The Board denied the motion on several jurisdictional grounds. First, the Board explained that "voluntary withdrawal of an appeal by the contractor deprives the Board of jurisdiction and leaves the contractor in the position of not having filed the appeal." Referencing Supreme Court precedent, the Board did not retain jurisdiction to enforce the settlement agreement, as the dismissal order did not incorporate its terms. See *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381–82 (1994). Second, the Board explained that even if its dismissal order had incorporated the settlement agreement, the CDA "does not grant the Board authority to engage in third-party practice." The Board does not permit impleader, joinder, or intervention, and any party before it besides the Government must be a contractor. The receiver was not appointed until after the contractor filed its claims and was thus not party to the appeals (even if a court were to conclude the receiver did have authority to act on behalf of the appellant). Lastly, Texas state court retained exclusive jurisdiction over any claims of fraudulent transfer, which would include the receiver's assertions about the settlement agreement's validity.

Halftime—That brings us to halftime. The decisions recapped in Part 1 establish that before a contractor can even compete for recovery under the CDA, it must clear the claim formational requirements: establishing a valid contract (and privity or proper sponsorship for subcontractors), presentment to the CO, certification, and a sum certain. In Part 2 of this CDA replay, we turn to those matches that did kick off and examine how several ended. From terminations for convenience and default to a handful of other notable decisions, the second half of our recap promises to provide more action-packed CDA highlights and lessons for

CDA practitioners. Hydrate and plan to meet us back here next week.

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This Feature Comment was written for *The Government Contractor* ***by*** **Amanda Sherwood** ***and*** **Kara Daniels.** ***Amanda is counsel and Kara is a partner in the Government Contracts practice at Arnold & Porter. When not glued to World Cup matches, they specialize in counseling, litigating, and resolving disputes for Government contractors and grantees. Special thanks to associate Kristina Lorch and summer associates Shawn Haq, Alex Kang, and Romita Chattaraj for their many assists in drafting this article. Fortunately for the authors, none of these star players were called offside.***

