

ISSUES IN FOCUS WEBINAR SERIES



When should the Government have known? The "Statute of Limitations" under the Contract Disputes Act

October 10, 2018



Bill Walter

Director, DHG

bill.walter@dhg.com



Gary McDonald

Director, DHG

gary.mcdonald@dhg.com



Paul Pompeo

Partner, Arnold & Porter

paul.pompeo@arnoldporter.com

- Background on the Contract Disputes Act (CDA) Statute of Limitations
- How have the courts interpreted contractor Statute of Limitations protections?
- Where do we stand now: Have key contractor protections been severely curtailed?
- Questions

- Contract Disputes Act
 - + Purpose
 - + Government and contractor rights and responsibilities
- CDA “Statute of Limitations”
 - + Six-year limitation
 - + Accrual of the claim
 - + What knowledge is/is not required
 - + Common government contracting applications



- Raytheon Missile Systems, ASBCA No. 58011, 13-1 BCA ¶ 35,241
 - + “Claim accrual... turns on what facts are reasonably knowable”
 - + Accrual of a claim is not delayed until the Government issues and audit
 - + Claim accrual is not dependent upon the knowledge of person with authority (e.g., the CO)
- Sparton Deleon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601
 - + Government cannot control the timing of claim accrual by conducting and issuing an audit
- Raytheon Co., ASBCA Nos. 57576, 57679, 13-1 BCA ¶ 35209
 - + Claim accrues with incurred cost submission and/or FPRP
- Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947
 - + Incurred cost proposal: Government could not have known of its potential claim until DCAA received the underlying general ledger detail
- Alion Sci. & Tech. Corp., ASBCA No. 58992, 15-1 BCA ¶ 36,168
 - + Incurred cost proposal submitted: Government provided evidence that the cost elements at issue were not identifiable in Alion’s final indirect cost rate proposal
- Raytheon Co., Space & Airborne Sys., ASBCA Nos. 57801 et al, 13-1 BCA ¶ 35,319
 - + Claim accrual upon submission of change in accounting practice and initial cost impact
- Sikorsky Aircraft Corp. v. US, 773 F.3d 1315 (Fed. Cir. 2014)
 - + Statute of Limitations is not jurisdictional

- When should the government have known?
 - + In general...
 - + Direct contract costs and invoices
 - + Indirect costs and Incurred Cost Proposals
 - Initial submission
 - Updates
 - + Other circumstances
- Impacts of government audit delays
 - + Do audit requests for new information start the clock over?
 - + Can the government extend the time limitation indefinitely?

Questions?



DHG

DIXON HUGHES GOODMAN LLP

*Join us next month on November
13th for...*

T.B.D.