

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?







*Join us next month on November  
13<sup>th</sup> for...*

***T.B.D.***