

TIMING AND PROPER FILING OF CLAIMS

CONSEQUENCES OF MISUNDERSTANDING

INTRODUCTION

A contractor needs to understand proper procedure and timing when filing a claim against the Government. The claim process can be difficult for a contractor to properly navigate, especially if a contractor does not thoroughly understand procedures and timeframes necessary to assure that a claim is not denied.

DECISIONS

There are two recent claims that were denied based upon failure to file a claim in a timely manner and with the proper agency: *Soto Construction v. Department of Agriculture* (See CBCA 3210 (May 1, 2013)) and *Diversified Maintenance Systems, Inc. v. United States*. (See 12-539C (Fed. Cl. 2013))

Soto Construction, Inc. v. Department of Agriculture involved a claim regarding differing site conditions. After filing a claim, Soto Construction received a letter from the contracting officer stating that the claim was denied; that it was a final decision from the contracting officer; and that Soto had the right to appeal, but must do so within 90 days from the date of the decision. Further instruction given included, "...furnish written notice to the agency board of contract appeals and provide a copy to the contracting officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number." (See CBCA 3210 (May 1, 2013))

Soto Construction believed its contract was with the United States Department of Agriculture (USDA), and therefore filed a "notice of intent to appeal" with the USDA. The notice was not mailed until the final filing date, resulting in the untimely submission of the document, six days past the 90 day requirement. Soto's appeal was dismissed based on lack of jurisdiction on May 1, 2013.

Diversified Maintenance Systems, Inc. v. United States was also a differing site conditions claim. Although Diversified filed a certified claim with the contracting officer, it neglected to attach the claim letter to its complaint; failed to properly address the claim letter to the contracting officer; and could not provide proof that the certified claim had been sent to or received by the contracting officer. Without proof of submission of a certified claim, the claim and appeal were denied, for lack of subject matter jurisdiction because, "...the Court's jurisdiction 'rises or falls on the circumstances at the time the initial complaint was filed'." (See 12-539C (Fed. Cl. 2013))

COMPLIANCE

As outlined above, contractors must be aware that there are procedures that must be followed to ensure a successfully-filed claim. A contractor should be educated about timelines, certifications, agencies, and about Contract Disputes Act (CDA) and Federal Acquisitions Regulations (FAR) requirements during the claims and/or appeals processes.

Even if a final decision has been issued that does not necessarily mean that a contractor is out of options. Contractors should note that they can still appeal a final decision to either the Court of Federal Claims, the Civilian Board of Court Appeals (Housed within the General Services Administration), the Armed Services Board of

Contract Appeals (ASBCA) or the General Services Board of Contract Appeals (GSBCA) . Such an appeal must be filed within a year of the final decision or denial.

A contractor should also note that something as simple as failure to confirm receipt of a claim; failure to request a final decision from the contracting officer; or addressing a certified claim or appeal incorrectly, can result in a denial of claim or appeal. These oversights can also result in loss of interest normally recoverable by a contractor as part of a properly filed claim.

A contractor needs to protect its options and understand how to prevent delay or denial of a claim. Employing a professional consultant can prevent missing statutory deadlines and aid in determining the proper avenue for a potential claim.

CONCLUSION

Assistance by a consultant should be obtained to protect a contractor's interests properly and thoroughly. The experts at Excell Consulting International, Inc. can assist and evaluate your company's position and provide valuable and cost-effective guidance for your business.

In the end, you will be glad you made the call.

EXCELL CONSULTING: "HERE TODAY FOR YOUR TOMORROW."

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