

## HOW THE GOVERNMENT REVIEWS QUANTUM

### Determining How Much is Recoverable

#### INTRODUCTION

When it comes to Quantum determinations, **what you don't know actually can hurt you**. Quantum is a term that determines what is considered the “reasonable value of the work performed.” Its purpose is to ensure that one party in a contract does not benefit more than the other party or parties, especially in terms of labor or materials on a Government contract.

Quantum claims provide the monetary information from claims filed by contractors to prove how the other party or parties were “unjustly enriched by work performed.” (See *River's Bend Red-E-Mix, Inc. v. Parade Park Homes, Inc.*, 919 S.W.2d 1 (Mo. Ct. App. 1996)). Outlined below are the items that the Government looks at in efforts to break down and determine whether or not a contractor is entitled to any Quantum.

#### ORGANIZATION

When Quantum is involved, the Government will investigate every possible avenue to prove that a **contractor's claim is without merit**. In preparation for reviewing the Quantum portion of a Government claim, each portion of the Quantum is analyzed individually. Additionally, a litigation team is assembled which typically consists of a DCAA auditor, a Contracting Officer, the Project Manager, a Contracting Officer's Representative, and any Site Inspectors, Project Engineers or Quality Assurance Representatives that pertain to the project.

The purpose of the detailed analysis is to ensure that the Contractor has proven its claimed costs (or, show that the contractor has not proven) its request for recovery in the claim. The contractor must prove:

1. **Entitlement** – Contractor's work was changed by the Government which makes the Government liable for increased costs. (See *T.L. James & Co.*, ENG BCA No. 5328, 89-1 BCA ¶ 21,643)
2. **Causation** – Connection between the basis for liability and the claim (increase or decrease) (See *Stewart & Stevenson Servs., Inc.*, ASBCA No. 43631, 98-1 BCA ¶ 29,653)

If the contractor cannot prove both entitlement and causation, its Quantum claim will fail.

#### STEPS TAKEN

The Government will follow **certain standardized steps** throughout the process of its Quantum analysis:

1. Know all of the facts – Investigate thoroughly, interview those with knowledge of the situation review key documents and find the root causes of extra costs
2. Eliminate costs that are not in accordance with Cost Accounting Standards (CAS) - review for allowability, allocability, and reasonableness. This review takes into consideration the following:
  - a. Profit is sometimes not allowable, such as under Suspension of Work (FAR 52.242-14), or Government Delay of Work (FAR 52.242-17); however profit is allowable in equitable adjustments and convenience terminations

- b. Attorney's fees are not allowable (in defense of claims against the Government)
  - c. Consultant fees are allowable under FAR 31.205-33
  - d. Breach of contract damages (may be allowable in breach of a requirements contract, bad faith termination for convenience, or Government's failure to disclose material information)
  - e. Interest is allowable - Prompt Payment Act Interest (31 U.S.C. §§3901-3907), Contract Disputes Act Interest (41 U.S.C. §611)
  - f. Costs are allocable if they were incurred specifically for the contract (FAR 31.201-4)
  - g. Reasonableness – the costs both in nature and amount must not exceed that which a prudent person would incur in the conduct of a competitive business (FAR 31.201-3)
3. Use of an adjustment formula to adjust the contract amount – direct costs and indirect costs
  4. Review the contractor's methods of proof – cost method used (i.e. actual cost, estimated cost, total cost, modified total cost);
  5. Verify all supporting documentation from the contractor – does the claim have to be certified? Is documentation consistent? Did the contractor adhere to CAS?

## PROOF REQUIREMENTS

When a contractor can prove that the Government caused a delay on the project, and that the delay further required that the contractor essentially “wait” on the Government to begin work again, **the burden of proof then rests on the Government** to prove that the contractor did not suffer any loss (*See Satellite Elec. Co. v. Dalton*, 105 F.3d 1418 (Fed. Cir. 1997). Otherwise, the burden of proof rests on the contractor because “...the burden – a preponderance of the evidence standard – is on the party claiming the benefit of the adjustment.” (*See Wilner v. United States*, 24 F.3d 1397 (Fed. Cir. 1994)

## CONCLUSION

Contractors should **educate themselves** about the Claims Process and what the Government will be looking for in the event a contractor submits a claim or a Request for Equitable Adjustment in order to show a cause and effect relationship supporting the claimed Quantum. Again, contrary to the old adage, what you don't know can, and often will, hurt your Quantum claim.

Thus, retaining the assistance of a professional consultant should be seriously considered to protect a contractor's interests properly and thoroughly. The experts at Excell Consulting International, Inc. stand ready to 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; by the way, it's a FREE CALL.**

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