

CLIENT ALERT

Contractor's Challenge to Cost Accounting Regulation Hits Headwinds

June 19, 2019

On May 29, 2019, the U.S. Court of Federal Claims dismissed Boeing's complaint against the government, rejecting claims that the Defense Contract Management Agency (DCMA) improperly applied FAR 30.606 – Resolving Cost Impacts – to hundreds of Boeing's defense contracts. Boeing alleged that FAR 30.606 violated the cost accounting standards (CAS) statute and conflicted with a contractual CAS clause. Using a representative contract example, Boeing claimed that DCMA's application of FAR 30.606 prevented Boeing from offsetting multiple, unilateral accounting changes, resulting in "mixed effects on the composition of Boeing's pool of costs on its CAS-covered contracts." But the Court ruled that Boeing waived its right to challenge DCMA on this issue because the conflict between CAS and the FAR clause was apparent at the time Boeing signed the contract. The Court held that because Boeing failed to "seek clarification, before award, of the conflict it saw between the CAS statute, the CAS clause, and FAR 30.606, its contract claims are foreclosed as a matter of law." The Court also rejected Boeing's allegation that applying FAR 30.606 to its contract amounted to an "illegal exaction" by the government, finding that the CAS statute at 41 U.S.C. § 1503(b) is not a money-mandating statute and, therefore, outside the Court's jurisdiction.

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