

CLIENT ALERT

Don't Sleep on Discovery, It Could Yield Basis for New Claim

March 4, 2019

In *Amec Foster Wheeler Environment & Infrastructure, Inc.*, CBCA 5168, 6298 (Feb. 29, 2019), the CBCA denied the government's motion for partial dismissal, which alleged that Amec's superior knowledge and negligent estimate claims were either "barred by the statute of limitations or insufficiently plead." Amec alleged that it first learned the basis for its claims during discovery in appeal CBCA 5168, and it could not have known the basis for them before then. The government argued that Amec should have known of those grounds shortly after award when Amec realized the "quantities and descriptions in the contract were radically incorrect." The Board rejected the government's position that the "contractor should consider asserting every conceivable legal theory of relief as soon as it encounters an unforeseen condition." The Board also disagreed with the government that it was clear that the contract specifications were not misleading and thus Amec's claims were insufficiently plead. The Board noted that there were a "myriad" of technical issues and that although the government's "factual defense may prevail at the hearing," it was inappropriate for the Board to decide it on a motion for partial dismissal.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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