

CLIENT ALERT

Inclusion of Deferred Compensation Found Proper Where Government Forced Contractor's Hand

August 11, 2017

In *Quimba Software, Inc. v. United States* (No. 12-142C), the Court of Federal Claims granted Quimba's Motion for Summary Judgment, finding that "Quimba's inclusion of deferred compensations costs in its 2004 [Incurred Cost Proposal] [wa]s allowable under the FAR...." Specifically, while the government argued that the FAR and CAS requirements precluded "deferred compensation for closely held companies 'except in the year in which the compensation [wa]s paid,'" the Court found that Quimba's situation fell within the "limited exception" to the IRS deductibility-timing rules because "Quimba's deferral of its FY 2004 compensation was unintended, unavoidable, and unanticipated[,] and "Quimba's financial difficulty, which forced payment of the compensation beyond 2004, was unforeseeable through FY 2004." In this respect, the Court recognized that the government effectively "forced Quimba's hand" to defer compensation when it failed to make additional payments beyond the first payment as a result of the government's "updating and approval process" of Quimba's accounting system, which took "the entirety of FY 2004 and continue[d] through a significant part of FY 2005." For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Stephen J. McBrady

Partner – Washington, D.C.

Phone: +1.202.624.2547

Email: smcbrady@crowell.com

Skye Mathieson

Counsel – Washington, D.C.

Phone: +1.202.624.2606

Email: smathieson@crowell.com