

CLIENT ALERT

Time is Money: Contractor's Claims for Payment Dismissed

May.10.2021

In *URS Federal Services, Inc., ASBCA No. 62475 (March 23, 2021)*, the Board dismissed a contractor's three-count complaint for lack of jurisdiction on one count and for failure to state a claim on the other two. The Board first addressed Count III, which alleged that the Government had breached the implied duty of good faith and fair dealing by failing to pay the invoiced amounts, because the Government had never disputed entitlement to the amounts or taken issue with the contractor's performance. The Government moved to dismiss for lack of jurisdiction because the operative facts of the count had not been presented to the contracting officer (CO) in the underlying claim. The Board agreed, finding that an operative fact of Count III (that the CO had denied the claim) had not been included in the original claim (which the Board noted made sense because the claim's submission predated its denial).

Under Count I, the contractor sought to recover invoiced costs that the Government had not paid; under Count II, the contractor sought costs that had not been presented to the Government until the submission of its claim in November 2018. The contractor's performance ended more than eight years before it submitted its claim, and the last invoice seeking payment was submitted only a week after completion. The Government moved to dismiss both counts for failure to state a claim. The Board granted the motion because the Government's affirmative statute of limitations defense was apparent from the face of the appellant's Complaint. The Board held that the contractor knew or should have known of all the events that fixed the Government's alleged liability and permitted assertion of the contractor's claim by the date of its last invoice, and that—although an invoice itself is not a claim—the contractor could have converted its unpaid invoices to claims within a reasonable time after submitting them. This decision serves as a reminder for contractors to be vigilant in submitting their claims within the CDA's six-year statute of limitations period.

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