



DEFENSE CONTRACT MANAGEMENT AGENCY
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OCT 30 2013

MEMORANDUM FOR CHIEF OPERATIONS OFFICER
EXECUTIVE DIRECTOR, CONTRACTS
EXECUTIVE DIRECTOR, SPECIAL PROGRAMS
COMMANDER, DCMA INTERNATIONAL

SUBJECT: ACO Guidance Regarding Contractor's Requests for Equitable Adjustment (REAs)

This memorandum provides basic guidance to ACOs who may receive contractors' requests for equitable adjustment (REA) due to the recent Government shutdown. ACOs should be reminded that the shutdown began October 1, 2013, but under the Pay Our Military Act (POMA), most DCMA employees and contractors returned to work by October 7th. Furthermore, during the 1-7 October period, many DCMA personnel were on the job supporting the inspection and acceptance of 'excepted' workload.

Is it ours? Should ACOs receive a contractor's REA, ACOs must first review the REA and determine that they are the appropriate point of contact. Due to delegations or interagency agreements, ACOs may not be the appropriate point of contact.

On what basis? Once ACOs have determined that adjudication of the contractor's REA falls within DCMA's purview, ACOs must then review the facts:

- What type of contract does the claim pertain to? (Firm Fixed Price, IDIQ, Cost Reimbursement, etc.)
- What are the facts of the contractor's underlying claim? Is the claim valid and is it substantiated? For example, courts will consider assertions for "restitution of lost revenue" during the Government shutdown without any basis in contract to be speculative and therefore, reject such assertions.¹
- What contract clauses form the basis of the contractor's REA? The Stop Work Order, Suspension of Work, and Government Delay of Work clauses provide for equitable adjustments but are not required contract clauses. The Changes clause for time and materials contracts and cost reimbursable contracts also provide for equitable adjustments but its language varies depending on the type of contract.

Costs? Lastly, the ACO must scrutinize the costs. What are the costs that the contractor claims? Did the contractor actually incur these costs? Tribunals have denied reimbursement for costs not actually incurred during a government shutdown.² Are the costs allocable to the

¹ *A-1 Real Estate, Inc.*, 97-2 B.C.A. (CCH) P29,123.

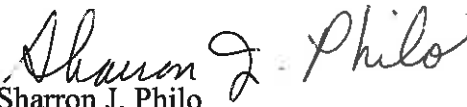
² *Universal American Enterprises, Inc.*, ASBCA 22562, 81-1 BCA P 14,942, at 43,285 ("Appellant has expressed an intent to pay additional salaries depending on the outcome of this appeal, in effect, the occurrence of a contingency, but the ASPR (DAR) cost principles incorporated into the contract do not permit reimbursement for an unincurred

contract as a direct result of the shutdown?³ Did the costs provide a benefit to the Government? If costs were incurred in accordance with the Stop Work Order clause, what actions did the contractor take to minimize the incurrence of costs? Since many program offices were recalled back to work under POMA, ACOs should carefully review the facts of the REA and costs incurred.

In summary, this memorandum reminds ACOs of steps they should take in analyzing contractor REAs they may receive resulting from the recent Government shutdown. ACOs must:

- determine the appropriate point of contact;
- ascertain the factual validity of the REA and the contractual basis of the contractors' REA; and
- scrutinize the costs claimed.

ACOs needing additional assistance may turn to their respective legal counsel for additional guidance or contact Ms. SoCheung Lee at (804) 734-0845.


Sharron J. Philo
General Counsel

but the ASPR (DAR) cost principles incorporated into the contract do not permit reimbursement for an unincurred cost. See *Norman M. Giller & Associates v. United States*, 210 Ct. Cl. 80, 535 F.2d 37 (1976); affirming . . . ASBCA No. 14696, 73-1 BCA P 10,016.

³ *Raytheon Stx Corporation v. Department of Commerce*, GSBCA No. 14296-COM.