

# Claims, Disputes, & Terminations



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APPEALS



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## Major Themes in 2019

- New Causes of Action
- Affirmative Defenses
- Jurisdiction
- Termination

## New Developments in Government Contract Cases

- Chugach Federal Sols., Inc., ASBCA No. 61320, 19-1 BCA ¶ 37380 (cause of action available for “negligent negotiations” where contractor ran into significant cost overruns due to lack of adequate staffing, and the government knew during bid evaluation that contractor’s staffing was low, but informed contractor that it was within acceptable range)
- K-Con, Inc. v. Sec. of the Army, 908 F.3d 719 (Fed. Cir. Nov. 5, 2018) (incorporating performance bond requirement into construction contracts under Christian Doctrine even where, on its face, contract was ambiguous as to whether it was a commercial item or construction contract)

## New Developments, cont.

- Agility Pub. Warehousing Co. v. United States, 143 Fed. Cl. 157 (COFC May 9, 2019) (under Debt Collection Act, government entitled to withhold payments on one contract for alleged overpayments on another contract, even though the government was not a party to the contract where it allegedly overpaid) (on appeal)
- Fox Logistics & Constr. Co. v. United States, COFC No. 18-1395C (Sept. 25, 2019) (finding that government's control of an account used by the prime contractor to pay subcontractors may have given the subcontractor a claim against the government as a third-party beneficiary)

## New Developments, cont.

- Sotera Defense Solutions, Inc. v. Dept. of Agriculture, CBCA Nos. 6029, 6030 (Aug. 29, 2019) (finding that contractor was entitled to equitable adjustment where agency assumed contractor's duty to identify SCA positions)
- Dyncorp International LLC, ASBCA 61274, 19-1 BCA P 37406, 2019 WL 3842473 (August 1, 2019) (finding that due to a mutual mistake about a basic assumption underlying contract performance, the Government bears the cost of the error and the contractor is entitled to reformation of the contract.)

## Affirmative Defenses in Gov. Contracts Litigation

- Sec. of Army v. KBR, 779 Fed. Appx. 716 (Fed. Cir. July 9, 2019) (contractor's affirmative defense of prior material breach was not a "claim" under *Maropakis* and did not require a COFD, even though prevailing on it entitled contractor to recover \$44M, because recovery was limited to money withheld by government in support of its claim for overpayment)
- ABS Dev. Corp., ASBCA No. 60022, 19-1 BCA 37,234 (Jan. 7, 2019) (finding that government contract was void *ab initio* due to government affirmative defense of fraud in the inducement defeated not only the contractor's pending claims, but also the government's claim for liquidated damages)

## Affirmative Defenses, cont.

- Meridian Engineering Co. v. United States, COFC No. 11-492C (Sept. 23, 2019) (finding the government's affirmative defense of accord and satisfaction failed where (1) the purported accord was unrelated to the claim, and (2) there was no meeting of the minds)
- URS Federal Services, Inc., ASBCA No. 61227 (Sept. 3, 2019) (finding that government's claim to recover unallowable costs is barred by affirmative defense of statute of limitations)

## Affirmative Defenses, cont.

- Engility, LLC, ASBCA No. 61281 (Aug. 19, 2019) (denying the government's prior material breach affirmative defense where the government had already effectively asserted a breach claim against the contractor; the government cannot assert a breach claim and, if that claim is unsuccessful, assert the same breach as an affirmative defense)



## Jurisdiction

- Development Alternatives, Inc., CBCA 5942, et seq., 18-1 BCA 37,147 (September 27, 2018) (finding defective certification deprived Board of jurisdiction over claim, notwithstanding later attempts to correct certification)
- Sungwoo E&C Co., Ltd., ASBCA No. 61144, 2019 WL 5496018 (Oct. 8, 2019) (finding jurisdiction over contractor's claims of fraud by the government even though contract was funded by Korea because (1) the contract was still for the direct benefit of the United States, and (2) allegations of "fraud" could be characterized as allegations that the government acted arbitrarily and capriciously or in bad faith)

## Jurisdiction, cont.

- Sand Point Services, LLC, ASBCA Nos. 61819, 61820 (Aug. 5, 2019) (finding that Board had jurisdiction even though claim allegedly involved fraud because (1) CO did not immediately report fraud, which undermined the fraud allegation, and (2) Board did not need to make a factual determination of fraud to resolve the appeal)
- Leidos Innovations Corporation v. General Services Administration, CBCA 6303, 19-1 BCA 37,438, 2019 WL 520905 (September 25, 2019) (granting a motion to dismiss by a successor contractor because the successor was in privity of contract with the government as a result of a novation agreement, finding that a successor in interest under a novation agreement is “entitled to all rights of its predecessor” as if it were the original party to the contract, and is entitled to “pursue any claims its predecessor could have pursued.”)

## Terminations

- Alutiiq Manufacturing Contractors, LLC v. United States, 143 Fed. Cl. 689 (June 27, 2019) (termination for default improper where dispute was based on personality conflicts and the contracting officer failed to give contractor a reasonable opportunity to cure)
- Carmazzi Global Solutions, Inc. v. Social Security Administration, CBCA Nos. 6264 et al. (Sept. 26, 2019) (just because one contract had been terminated for convenience did not mean that contractor's other, related contracts, which had been terminated for default, should be also be terminated for convenience; the termination of one contract does dictate how similar contracts should be terminated)



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