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NCMA-WPI
Federal Contractor Update

Interesting Court, ASBCA and
GAO Decisions from 2018

Presented by

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Available Forums

GAO – Protests: Pre-award and post-award

ASBCA – Contract claims

Court of Federal Claims

- Protests
- Contract claims

Court of Appeals for the Federal Circuit

- ASBCA
- COFC

The Christian Doctrine

- The ***G.L. Christian*** case – Termination for Convenience
- Clauses incorporated by operation of law
- The ***K-Con*** case (CAFC) – Payment and Performance Bonds
 - Patent ambiguities – facially inconsistent provisions
 - Christian Doctrine applies when:
 - The clause is mandatory
 - The clause expresses a significant or deeply ingrained strand of procurement policy

Another CAFC Case

Shell Oil Co. v. U.S.

- Government liable to WWII aviation fuel contractors
- “Taxes” clause required reimbursement for “taxes, fees, or charges ... by reason of the production, manufacture, storage, sale or delivery of [fuel]”
- Contracts required Government to pay for environmental clean-up costs

GAO Bid Protest Statistics

- Slight decrease in success rate
- Significant decline in hearings



GAO Decisions

- Most common protest grounds
 - Unreasonable technical evaluation
 - Unreasonable cost or price evaluation
 - Flawed selection decision



Science Applications International Corporation

- Technical vs. price trade off

Sev1Tech, Inc.

- Misrepresentation regarding availability of staff

EFS Ebrex Sarl

- Failure to disclose evaluation factors; fees awarded
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ASBCA

Phoenix Data Solutions

- Contractor's performance failures not relevant to a T4C recovery
- Pre-contract costs
- Adjustment for loss



Civil False Claim Act

- It is unlawful to:
 - Knowingly present (or cause to be presented) to the Government a false or fraudulent claim for payment
 - Make or use a false record or statement that is material to a claim for payment
- Knowingly = actual knowledge, deliberate ignorance or reckless disregard of the truth or falsity of information

Civil False Claim Act (cont.)

- Size status representations
- Buy American Act and Trade Agreements Act compliance
- Compliance with specifications/test requirements
- Costs incurred
- False certifications

Questions?



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