

CLAIM ACCRUES WHEN INJURY OCCURS, NOT WHEN MONETARY DAMAGES ARE INCURRED

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The Armed Services Board of Contract Appeals (“ASBCA”) recently held that the accrual of a claim occurs when some injury has occurred to a contractor. Actual monetary damages need not have been occurred. *BNN Logistics*, ASBCA Nos. 61841 *et al.*, Aug 5, 2021. The accrual date is very important because claims that are filed after 6 years of their accrual are barred by the statute of limitations in the Contract Disputes Act, which states:

Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

41 U.S.C. §7103(a)(4)(A).

Important to this appeal is the definition of “accrual” used in Part 33 of the Federal Acquisition Regulation (“FAR”) which is:

Accrual of a claim means the date when all events that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

FAR 33.201.

BNN performed a National Afghan Trucking Contract for the Army. The contract included a Quality Assurance Surveillance Plan which set performance standards and allowed the government to make deductions on draft invoices for failure to meet given metrics. After BNN initially submitted its invoices, the government returned them with deductions it had applied based on BNN’s performance, and BNN would then submit the revised invoices (with deductions taken) for payment. BNN submitted a claim for all of the deductions that the Army had instructed it to take.

The Army sought summary judgment on all claims (for the deducted amounts) asserting the affirmative defense of the passage of the six year statute of limitations. In response, BNN (which also sought summary judgment) argued that its claims did not accrue until the Army paid the invoices *that contained the improper deductions*. Up until that time BNN had “suffered no injury.”

The Board examined both the dates that BNN received invoices back from the Army for corrections (with deductions) and the dates the invoices were paid. BNN did not dispute that the deductions were known to BNN once it received the invoices back from the Army. BNN simply stated that it had suffered no injury until it received the payment on the reduced invoices. The Board disagreed. Based on FAR 33.201, the Board held that BNN’s claim accrued when it

received the invoices back from the Army instituting the deductions. Basing its decision on those invoices where the limitation period had not expired prior to the claim, the Board held there would be partial summary judgment on all invoices where the limitation period had expired prior to BNN's claim, and denied summary judgment where the limitation period had not expired.

Takeaway. The important aspect of this case is that pursuant to FAR 33.201, a claim accrued when "all events that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However monetary damages need not have been incurred." BNN knew about the deductions and amounts when the invoices were returned to it for correction. BNN should not have waited until it received the reduced payment—it knew about its injury and the dollar amount of its injury when it received the draft invoices back from the Army for final preparation and submission for payment.

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