

MISSING DEADLINES IN CONTRACT ADMINISTRATION AND CLAIMS

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This article is the second in a series about mistakes in missing deadlines. The first covered deadlines in protests, and this article discusses deadlines in contract administration and claims. For both, missing deadlines can result in very serious consequences to the contractor, therefore missing a deadline can be a very important mistake.

In a Contract: Every contract has a delivery schedule. Each deliverable has a deadline. Unexcused failure to meet the delivery schedule is a cause for a termination for default.

The default clause clearly states that the government may default a contract if the contractor fails to deliver the supplies or to perform the services within the time specified in the contract. [FAR 52.249-8\(a\)\(1\)\(i\)](#). Unless the contractor can show that the delay or nonperformance was caused by an “excusable delay,” the contract may be terminated for default. A recent example at the Board was *Precision Standard, Inc.* [ASBCA No. 59116, July 13, 2015](#), where the default was held to be proper. When a contractor is facing default because of its failure to meet the delivery schedule, the only reasonable alternative is to seek a modification from the contracting officer that extends the delivery schedule. But contractors *must provide consideration* (something of value, such as a lower price or an extended warranty or longer period of performance) in order for the modification to be valid. See *Aviation Contractor Employees, Inc. v. United States*, [945 F.2d 1568 \(Fed. Cir.1991\)](#) and *Yardney Tech. Prods. Inc.*, [ASBCA No. 53866, 09-2 BCA ¶34277](#).

Claims & Appeals: (1) A claim must be filed with the Contracting Officer within 6 years of accrual of the claim. [41 U.S.C. § 7103](#).

A claim accrues on the date when all events that fix the government's liability, and permits assertion of the claim, are known or should have been known. If a contractor submits its claim more than six years later, the Government (or a court or board) will dismiss it as not within the statute of limitations. There are numerous examples of such dismissals. See, e.g. *New Iraq Ahd Co.*, [ASBCA No. 58763, Oct. 22, 2014](#)

(2) An appeal of a claim denied by a Contracting Officer must be filed at a Board of Contract Appeals within 90 days from the date of receipt of the contracting officer's decision. [41 U.S.C § 7104\(a\)](#).

If a contractor files after 90 days, the Boards consistently dismiss the appeal, ruling that the Board has no jurisdiction to hear an appeal, because the Contract Disputes Act requires the filing be within 90 days. A contractor must count the date of receipt on the day it is received, regardless of the time. You cannot skip the day for counting purposes just because it arrives after your firm's (or an agency's) “normal business hours.” A

contractor received a final decision on a contract from its Contracting Officer on July 17, 2014 at 4:48 pm local time. It appealed the decision to the Board 91 days thereafter, which was beyond the statutory time limit of 90 days. The contractor argued that the time of receipt was “after its normal business hours.” The board dismissed the appeal, ruling that the contractor’s business hours were not relevant—only the date of receipt. *Government Services Corp.* [CBCA 4204 \(Nov. 19, 2014\)](#).

(3) Alternatively, an appeal of a claim denied by a Contracting Officer must be filed at the U.S. Court of Federal Claims within 12 months from the date of receipt of the contracting officer’s decision. [41 U.S.C § 7104\(b\)](#).

If a contractor misses the 90 day deadline to file at the Board, it can still file an appeal at the Court of Federal Claims within 12 months. Anything beyond 12 months will be dismissed for lack of jurisdiction. As expected, the Court enforces this deadline strictly, and its appellate court, the Federal Circuit, supports this strict interpretation. *Borough of Alpine v. United States*, [923 F. 2d 170 \(Fed. Cir. 1991\)](#). As is the case with the Board’s jurisdiction, the deadline is contained in the Contract Disputes Act.

The deadlines in contract administration and claims, just as the deadlines in bid protests, discussed in the previous article, are strictly enforced. Contractors must ensure that they file within the deadlines, or risk dismissal of their protest, claim or appeal.