

AGENCIES CANNOT PRO-RATE INVOICES UNLESS THE CONTRACT SO STATES

By Richard D. Lieberman, Consultant and Retired Attorney

Have you ever had a situation where your Government Agency advised you that it would reduce or pro-rate your monthly services invoice for days not worked, but your company objected and said “that procedure is not in our contract.” The Agency response is frequently: “so what, we’re doing it anyway, you didn’t work those days.” That’s exactly what happened to Amaratek during last year’s Government shutdown. The Armed Services Board of Contract Appeals ruled the Army’s invoice adjustment to be improper, and allowed Amaratek’s claim for a full monthly invoice amount even though only six days were worked. *Amaratek*, ASBCA Nos. 59149, 59395, Nov. 10, 2014.

In *Amaratek*, the Army awarded the company a contract for laboratory services at the Yuma Proving Ground in Arizona. There was a one year base period, and two option periods—the second of which was an option running from July 1, 2013 through June 30, 2014. This option consisted of 12 units of service of one month each, with each unit (month) priced at \$58,947.

On June 27, 2013 the Army exercised the second option. However, on October 1, 2013, the Army ordered Amaratek to stop work, citing “the Government shutdown in the absence of FY 2014 appropriations.” Amaratek followed the stop work instructions, but on November 6, 2013, it invoiced the Army for \$58,947 for services for the *entire* month of October (plus some other costs not relevant here). The Army rejected the invoice, and requested Amaratek to resubmit its invoice “prorated to reflect only that portion of the month for which funds were available and that service was actually performed (the six workdays from October 23-31, 2013).”

In a non-precedential opinion issued under its Small Claims Procedure, the Board held that Amaratek was entitled to \$58,947 for the services provided in October 2013, even though the contractor had worked only 6 days. The Board noted that the government ordered one *unit* of work (one month), but then decided to pay on a basis different from the unit of work specified in the contract (six days of work). The Board ruled that the Government must pay for a full month of service because that is what it ordered, and only months were specified in the contract. The Board said: “Here the Government relies upon a unit of work that the contract does not specify (days) instead of the unit of work that the contract specifies (months).” The Army ordered service for the month of October 2013 and received all the service it allowed Amaratek to provide during that month; therefore the Army owed the contract’s unit price for that service, \$58,947.

TIPS: The Board opinion includes an important caveat, namely that the Army “has pointed to no provision in the contract that gave it the authority to avoid paying the monthly charge.” However, if the contract included a “pro-rate” sentence, such as “If less than a month of service is provided, the government shall pro-rate the payments based on the number of days of service provided,” then the Army could have pro-rated and paid Amaratek for only the six days of actual work.

Alternatively, the Army could have provided a *daily* rate for this service as the unit of measurement in the Contract Line Item Number (“CLIN”) in the contract. Then the government could have ordered and paid for 6 units (6 days) only.