

FINAL SIGNED RELEASE BARS FUTURE CLAIMS

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Once again, a contractor was barred from raising future claims on a contract where the same contractor had executed a final release that included no reservations or exceptions, the government had made final payment, and none of the limited situations for re-opening the contract to a claim applied. “*Unnamed*” (*Redacted name*) *Contractor*, ASBCA No. 61065, Nov. 14, 2017.

The Unnamed contractor was awarded a \$1.9 million contract to construct and provide building upgrades for the Afghan Police Headquarters. The construction was inspected, accepted and deemed complete by the government on November 4, 2013. On the same day, Unnamed submitted an invoice that specifically released and discharged the government from all liabilities, obligations and claims arising out of or by virtue of the contract, except specified claims. The outstanding, specified claims section was left blank, and the box beside “NONE” on the release was checked.

In December 2013, after two rounds of clerical corrections between Unnamed and the Defense Finance and Accounting Service, the contractor submitted an amended final invoice, which contained the release language and no exceptions. Later in December 2013, the government made final payment to Unnamed.

In October 2016 (about two years and 10 months after final payment), Unnamed submitted a claim for \$144,000 which asserted that the contracting officer’s representative had directed and approved work under the contract, and the contractor had been informed that the contracting officer would issue a modification for that amount. Unnamed stated that it “forgot to check [its] record and signed the final release in error.” The Contracting Officer denied the claim based on the final release, and the Board fully concurred in the denial.

The Board noted that a final release followed by a final payment to a contractor generally bars recovery of the contractor’s claims under the contract, except for those excepted on the release. *Mingus Contractors, Inc. v. United States*, 812 F. 2d 1387, 1394 (Fed Cir. 1987). The only special and limited exceptions to this rule include mutual mistake, continued consideration of a claim after the execution of the release, fraud, or duress. The Board held that none of the exceptions applied. Unnamed had several opportunities to notify the government of additional work giving rise to a claim, but never raised the issue. And, the mistake, if there was one, was solely on the part of Unnamed (not mutual). Therefore, Unnamed could not benefit from any of the special and limited exceptions to the general rule that a final release bars recovery of claims made after the release had been executed.

The takeaway: Contractors should only sign a release when all potential claims have been acted upon by the government. If you believe you have a claim but have not submitted it, include a description of the claim in the release when you sign the release or final invoice.

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