

SUPERIOR KNOWLEDGE BY GOVERNMENT FOUND

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A recent case at the Armed Services Board of Contract Appeals (the “Board”) found the Air Force liable for a superior knowledge claim on a contract to provide the services of healthcare professionals as part of a family advocacy and domestic abuse program. *IVA’AL Solutions*, ASBCA No. 63430, Feb. 12, 2025.

The first part of the decision concerned the method of IVA’s billing for what the Board called “fixed-price, level of effort Term CLINs [Contract Line Item Numbers].” The second part concerned a requirement to change the contract to bill through the wide area workflow system (“WAWF”). Neither of these two parts is discussed in this blog.

The third part of the decision concerns the superior knowledge claim which is discussed below. The Board noted that the government has an implied duty to disclose “unavailable information regarding some novel matter affecting the contract that is vital to its performance.” Superior knowledge applies when these four prongs are present:

1. A contractor undertakes to perform without vital knowledge of a fact that affects performance costs or duration;
2. The government was aware the contractor had no knowledge of and had no reason to obtain such information;
3. Any contract specification supplied misled the contractor or did not put it on notice to inquire of the government; and
4. The government failed to provide the relevant information.

The Board held that regarding prong one above, it was routine for contractors on a service contract to hire the existing contractor’s workforce, and knowledge of vacancies would indicate to a bidder the need to pay higher wages and more recruiting expenses.

With regard to prong two, the Air Force was aware that IVA’AL had no way of knowing that there were staffing problems in the Western part of the nation.

With regard to the third prong, IVA’AL specifically asked before bidding “Are there current openings on the contract, and if so, can the Government share which positions are vacant.” The Air Force’s response was “No,” however the current contractor had a 29% vacancy rate that ultimately increased to 47% on the last day of its performance.

Finally, on the fourth prong, the Air Force failed to provide to the offerors (including IVA’AL) the relevant information on the vacancies in the current contract.

The Board sustained the superior knowledge claim and returned the appeal to the parties to negotiate quantum.

Takeaway. A positive finding on all four prongs will result in the sustain for a superior knowledge claim. In answering the question about the vacant positions the Air Force only answered the second clause (“can the government share which positions are vacant”) instead of answering both parts of the question, the most important part of which was “are there current openings on the contract”.

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