

ONE YEAR IS THE DEADLINE FOR SUBMITTING TERMINATION FOR CONVENIENCE SETTLEMENT PROPOSALS

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During the Civil War, at the famous Andersonville Prison, on the inside of the stockade and twenty feet from it, there was a deadline established, over which no prisoner was allowed to go, day or night, under penalty of being shot. By the 1900s, the word “deadline” was being used to describe any line that shouldn’t be crossed, not just where the offender would be shot. In the 1920s, deadline was being used as a synonym for “time limit” and was primarily associated with newspaper jargon. In the newspaper business, to have the latest news and still get a newspaper printed and distributed on time requires strict time limits for those who write it.

Why are deadlines important for government contractors? Because there are numerous deadlines in government contracting, and woe will be the government contractor who misses them. Although the penalty is not being shot, it might as well be, for missing deadlines will make the contractor feel like he’s been shot and run over by main battle tank! Agencies and courts demand strict compliance with deadlines.

This blog discussed some of the government contract deadlines in “Missing Deadlines in Contract Administration and Claims” (March 3, 2016). This article considers the deadline for submitting a final settlement proposal after a contract has been terminated for convenience. This issue was considered in *Abdul Khabir Const. Co.*, ASBCA No. 61155, April 6, 2018.

In *Abdul*, the contractor in April 2009 was awarded a contract for construction of living quarters and support facilities in Afghanistan. However, *Abdul* did not perform any work on the contract, and on January 14, 2010, the contracting officer proposed a no cost termination for convenience, which directed that all work cease immediately. On March 26, 2010, the contracting officer issued a unilateral modification for a no-cost settlement agreement, releasing both parties from any further obligations under the contract. The effective date of the convenience termination was identified as March 26, 2010. On October 29, 2012, *Abdul* advised the Army that its contract had been terminated and it had not been paid “the attached” paid [Defense Base Act] payment. In February 2017, *Abdul* submitted a complaint letter to the Army seeking \$507,000, and certified it as a “claim made in good faith”

FAR 52.249-2(e), which was included in the contract, states that:

After termination, the Contractor shall submit a final settlement proposal to the contracting officer ...promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period.

Within one year from the March 26, 2010 termination date, the contracting officer never extended, in writing or otherwise, the time in which *Abdul* could submit its termination settlement proposal. This meant that the deadline for *Abdul*’s submission of a settlement proposal was March 26, 2011. The first communication seeking any funds (i.e., a settlement

proposal) occurred in October 2012, as explained above. Because the termination settlement proposal was untimely, and the contracting officer did not grant an extension, the Board denied *Abdul's* appeal of its denied claim.

The Takeaway: Contractors must submit timely termination settlement proposals, or obtain from their contracting officer a written extension. Failure to submit on time will likely mean that any claim or appeal thereof will be denied.

It's not just termination settlement proposals that have strict deadlines. Here are some of the other important deadlines that should not be missed.

IMPORTANT DEADLINES

In Bid Protests: (1) Any protest of the terms of a solicitation must be submitted *before* the closing date for an RFP, and before the opening date for an IFB.

(2) Other protests must be filed at the Government Accountability Office ("GAO") not later than 10 days after the basis of protest is known or should have been known. 4 CFR §21.2(a)(2).

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.

In Termination for Convenience Contractor must submit its final termination settlement proposal to the contracting officer no later than one year from the effective date of the termination, unless extended in writing by the contracting officer upon written request of the contractor within this one year period. FAR 49.206-1, FAR 52.249-2(e).

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.

(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 USC § 7104(a)

(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 USC § 7104(b).

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Richard D. Lieberman's FAR Consulting & Training at <https://www.richarddlieberman.com/>, and
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