

Understand the Limits of CAS Disclosure Statement Reviews

Winter 2014

The January 16, 2014 Armed Services Board of Contract Appeals (ASBCA) decision in the *Appeal of Northrop Grumman Corporation*, ASBCA No. 57625, 2014 WL 289000, provides a cautionary tale that should be heeded by contractors that are subject to the Government's Cost Accounting Standards (CAS). In a post-retirement benefits (PRB) dispute with a potential, albeit prospective, quantum of \$377 million, the Board denied the appeal in a decision that addressed, and rejected several NGC arguments concerning the validity, under the Federal Acquisition Regulation, of certain aspects of the company's PRB cost accounting. The merits of the underlying dispute are highly esoteric in nature and narrow in scope.

However, one of NGC's primary arguments was that the Government had repeatedly reviewed NGC's CAS Disclosure Statement setting forth the accounting practice that was the subject of the dispute, but had not objected to the practice. The Board quoted the agency letters conveying the results of this process, under FAR 30.603-2, in its Findings of Fact. For example, the Board set forth the following language in the decision:

I have noted no instances of noncompliance with applicable Cost Accounting Standards or with FAR Part 31 cost principles. *However, instances of noncompliance not detected during this review may be discovered during future review of your cost accounting practices. These disclosed practices shall not by virtue of such disclosure be deemed proper, approved, or agreed to practices for pricing proposals or accounting and reporting contract performance cost data.* [Emphasis added by the Board]

In rejecting NGC's arguments related to the Government's CAS Disclosure Statement reviews, the Board stated as follows:

Appellant argues that it was affirmatively misled by the government's repeated notifications that its use of [Deficit Reduction Act of 1984 (DEFRA)] was FAR compliant. We disagree for a number of reasons. First, none of the [Defense Corporate Executive (DCE)] responses to appellant's disclosure statements cited by appellant specifically represented, without qualification, that DEFRA was FAR compliant. The government did indicate,

after a review of a disclosure statement, that no FAR violations were noted, but these responses were, for the most part qualified, and reserved government rights on further review.

While the finer points of this decision warrant further study by cost accounting practitioners, of immediate importance to companies wanting to stay on the right side of the CAS-compliance line is a reminder that, to the extent that they are relying on Government silence concerning an accounting practice, in a FAR 30.603-2 review or otherwise, as approval of all disclosed cost accounting practices, a closer look may be needed. For any practices considered potentially controversial, companies may wish to determine whether the qualification included in the letters to NGC, or something like it, is also applicable to their own practices. If so, action to surface and resolve any accounting issues, openly and formally with the Government, should be at least considered. NGC relied on government silence in the face of disclosed accounting practices that were ultimately deemed improper. We should all consider and, as appropriate, act upon the lesson from this case.