

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
The Boeing Company) ASBCA No. 58660
)
Under Contract No. FA8801-05-C-2004 *et al.*)

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OPINION BY ADMINISTRATIVE JUDGE O'CONNELL ON APPELLANT'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

INTRODUCTION

Appellant, The Boeing Company (Boeing), has filed a motion to dismiss a government claim seeking \$647,042, plus interest, due to certain Boeing cost accounting practice changes. Boeing contends that the government's claim accrued no later than 2 February 2007, whereas the government contends that it accrued no earlier than 16 February 2007. This two-week difference is critical because the contracting officer's final decision at issue is dated 8 February 2013, and the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, contains a six-year statute of limitations on claims.

In July 2006, Boeing disclosed its intention to consolidate two of its sites in California in early 2007. From November 2006 to February 2007, the contracting officer (CO) repeatedly implored Boeing to comply with the cost accounting disclosure requirements contained in the Federal Acquisition Regulation (FAR). Subsequently, Boeing submitted a revised Cost Accounting Standards Board Disclosure Statement Revision, and then twice revised it. Boeing also met with the government and made presentations on PowerPoint slides. However, Boeing did not submit what is referred to in the FAR as a general dollar magnitude of the change, or at least not before 8 February 2007.

As discussed in this opinion, Boeing places a lot of emphasis on information conveyed in the PowerPoint slides used in its presentations in November 2006 and January 2007. Essentially, Boeing is asking the Board to conclude that it conveyed enough information through these slides and other submissions to trigger accrual of the claim. This is a tall order seven years after the fact given that: a) we were not at the meetings where the slides were discussed; b) we have not heard live testimony (subject to cross-examination) from witnesses who were at the meetings; c) the shorthand style of communication in these slides means that they are inherently subject to multiple interpretations; and d) we lack a full appreciation of the highly complex business relationship between the parties. This relationship is characterized by highly sophisticated contracts, people, and most of all, accounting practices, making it difficult to determine the accrual date of the government's claim using PowerPoint slides as our guide.

After careful consideration of the evidentiary record, we have concluded that Boeing did not convey sufficient information to the government in a timely manner to trigger the statute of limitations. Accordingly, we deny the motion, subject to revisitation after further development of the evidentiary record.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. In July 2006, Boeing informed the Defense Contract Management Agency (DCMA) that it would be combining its Anaheim, California, Accounting Business Unit (ABU) with its Huntington Beach, California, ABU. The facilities, equipment and personnel at Anaheim would be consolidated with those at Huntington Beach, which would remain in place. As part of this consolidation, Boeing planned to conform the accounting practices of Anaheim to those of Huntington Beach. (Supp. R4, tab 1; app. mot. at 3; gov't resp. at 1-2)

2. Boeing provided a briefing regarding this consolidation to DCMA's Huntington Beach divisional administrative contracting officer (DACO), John C. Caudill, on 21 July 2006 (supp. R4, tab 1; app. mot. at 3). PowerPoint slides from this presentation contained various statements about the costs and benefits of the consolidation but they did not specifically indicate how (or whether) Boeing's cost accounting practices would be affected by the consolidation.

3. On 21 November 2006, Mr. Caudill wrote to Boeing concerning several Boeing announcements that "could potentially result in significant voluntary accounting changes effective January 1, 2007" (supp. R4, tab 2 at 1). Among these actions, Mr. Caudill cited the consolidation of the Anaheim and Huntington Beach ABUs. Mr. Caudill asked which accounting systems would be consolidated and what other issues this consolidation would present. (*Id.*)

4. Mr. Caudill contended that FAR 30.601(a)(1), 30.603-2(a)(2) and 52.230-6(b), the latter of which was incorporated in the contract (R4, tab 1 at G-000033), required Boeing to submit a description of any cost accounting change, the total potential impact of the change on contracts containing a cost accounting standards (CAS) clause, and a general dollar magnitude (GDM) of the change that identified the potential shift of costs between CAS-covered contracts and other contractor business activity (supp. R4, tab 2 at 2). Mr. Caudill also stated that this information had been due 60 days before the effective date of the proposed change (*id.*).

5. Mr. Caudill stated that because of both the “potential changes” in the Huntington Beach financial base over the next four years and the “imminent changes” that would take place on or before 1 January 2007, he was “becoming increasingly alarmed at the potential for harm” to Boeing and the government if Boeing did not move with “great urgency” to submit both Disclosure Statement changes and the GDM (supp. R4, tab 2 at 2).

6. As a result of the 21 November letter, Boeing met with Mr. Caudill again on 29 November 2006 and provided him another PowerPoint presentation (supp. R4, tab 3). In a slide entitled “IDS [Boeing Integrated Defense Systems] Disclosure Statement and Cost Impacts,” Boeing stated that “Disclosures Statements” were awaiting final approval from IDS senior management and that it expected to submit the “Disclosure Statement” [sic] and cost impact submission to the government “shortly” (*id.* at 6).

7. On 21 December 2006, Boeing submitted two Disclosure Statements (DS-1), one for Anaheim and the other for Huntington Beach, to the respective DACOs for those sites. Each submission described changes that would go into effect on 1 January 2007. (App. mot. at 5, ¶ 9; gov’t resp. at 2)

8. In a revision log included in the submissions, Boeing identified in bold several revisions that it contended were an “accounting change” or were “a change in cost accounting practice” (supp. R4, tab 4 at B00037-45).

9. The Huntington Beach submission indicated that this site was predominantly engaged in research and development, and that more than [REDACTED] of its contracts were CAS-covered contracts (supp. R4, tab 4 at B00036, B00047).

10. Eight days later (29 December 2006), Mr. Caudill sent an email to Daniel J. Winston, Director of IDS Accounting, in which Mr. Caudill acknowledged receipt of the 21 December 2006 submissions (supp. R4, tab 5A at B00504). Mr. Caudill stated “I am concerned that the many changes being made without benefit

of a causal/beneficial analysis or a GDM presentation to the Cognizant Federal Agency Official (CFAO) and the sharing of Anaheim/Huntington Beach selected, pools and bases may not be in the best interest of the DoD Customers...” (*id.*).

11. Mr. Caudill stated that for him to make an “informed decision on the necessary and formal administrative disposition” of the 21 December 2006 Disclosure Statement, he needed to discuss the issue with Boeing “on the record” and that he required additional facts and explanations (supp. R4, tab 5A at B00504). He stated that these discussions would involve the transfer of costs between the two ABUs under Boeing’s Cost Accounting Standards Board DS-1.

12. Mr. Caudill then stated that he had reserved conference space for two days of discussions on 4-5 January 2007 (supp. R4, tab 5A at B00505). He ended the email by again stressing his view of the urgency and the need for clarification of the 21 December 2006 Disclosure Statement:

Clarification of the implementation policies, procedures and practices described in Boeing’s December 21, 2006 CASB DS-1...is of utmost urgency in resolving issues related to the timing of the release of the CASB DS-1 and the implementation date, numerous issues that appear to cross over to other Disclosure statements (Anaheim, ULA), and the matter of Government Authority and responsibility should the Disclosure Statement, as presently presented to the Huntington Beach DACO, be found misdirected or inadequate for transmittal by the CFAO to DCAA for review.

(*Id.*)

13. Mr. Caudill attached a six-page agenda to the email (supp. R4, tab 5A at B00506-11). At the conclusion of the agenda, Mr. Caudill informed Boeing that its submission of cost impacts of the changes was “delinquent” and “prevent[ed]” him from going to program offices with cost impacts (*id.* at B00511). He further stated that he could not make a determination as to the reasonableness of the proposed changes due to the lack of cost data showing the impacts and the shift of costs among the major programs. Mr. Caudill acknowledged that Boeing had provided briefings on the consolidation but stated that none of the briefings had identified the values of costs transfers between Anaheim and Huntington Beach, nor had Boeing submitted a GDM. (*Id.*)

14. It is not clear from the record whether the proposed meeting on 4-5 January 2007 took place.

15. On 19 January 2007, Boeing submitted a single Disclosure Statement for both sites to Mr. Caudill (supp. R4, tab 6). Except for some minor revisions, the cover letter for this submission was substantially similar to the cover letters for Boeing's 21 December 2006 disclosure statements (app. mot. at 6, ¶ 17; gov't resp. at 2).

16. On 25 January 2007, Boeing submitted a forward pricing rate proposal for the combined site to Mr. Caudill. It stated that the submission incorporated the "consolidation of Anaheim and Huntington Beach rate structures and the associated accounting changes necessary to achieve a common cost structure." (App. mot. at 7, ¶ 18 (quoting Supp. R4, tab 6A at B00512); gov't resp. at 2)

17. Boeing provided a briefing to the government on the forward pricing rate proposal on 31 January 2007. The record contains 40 slides from this presentation. (Supp. R4, tab 7) Boeing contends that slide 35 (entitled "Program Impacts \$ in M") shows that there were increased costs, while DCMA contends that it shows decreased costs (*id.* at B00348). As explained in a declaration attached to Boeing's reply brief, the legend at the top of the slide states that numbers in parentheses indicate increased costs (app. reply br., ex. 3, ¶ 6). Thus, the slide indicates that there will be approximately [REDACTED] in cost increases from 2007 to 2011 (supp. R4, tab 7 at B00350).

18. By letter dated 2 February 2007, Mr. Caudill returned the Huntington Beach Disclosure Statement because, he contended, it was inadequate (supp. R4, tab 8). In this letter, Mr. Caudill again complained of Boeing's failure to submit a GDM or a detailed cost impact proposal for the Disclosure Statement cost accounting changes (*id.* at B00355). Mr. Caudill stated that Boeing had been scheduled to deliver a GDM on 19 January 2007 but had failed to do so. He further stated that the government was estimating a GDM that it would deliver to Boeing by 16 February 2007. (*Id.*)

19. On 7 February 2007, Mr. Caudill wrote to DCMA customers to provide DCMA established interim forward pricing rates for calendar years 2007-2011 (supp. R4, tab 9). In the letter, Mr. Caudill stated that Boeing's forward pricing rate proposal was inadequate but it was the best operational information the government had to date (*id.* at B00361). Mr. Caudill further stated that he had recommended the lower of calendar year 2006 actual rates and Boeing's 25 January 2007 forward pricing rate proposal (*id.* at B00362). Finally, Mr. Caudill stated that DCMA recommended that its customers consider including a contractual clause that would provide for a decrease in rates if information obtained at a later date supported a rate adjustment (*id.*).

20. On 16 February 2007, Boeing submitted another revision to its Disclosure Statement for Huntington Beach (R4, tab 2). This submission once again included a

cover letter substantially similar to past DS-1 submissions and the same 20 December 2006 memorandum containing descriptions of the 2007 accounting changes (app. mot. at 9, ¶ 29). On that same day, Mr. Caudill notified Boeing by email that this new DS-1 satisfied his concerns and that he was forwarding it to DCAA for audit (app. mot. at 9, ¶ 30).

21. There is no evidence in the record that either Boeing or the government prepared a GDM or a detailed cost proposal on or before 8 February 2007 (that is, six years before the date of the contracting officer's final decision). However, in a 27 February 2007 letter from Mr. Caudill to Boeing, Mr. Caudill acknowledged receipt of a GDM from Boeing on 16 February 2007 (supp. R4, tab 11 at B00382). This GDM is not in the record.

22. The parties' relationship continued peacefully for the next several years. Boeing submitted revisions to the disclosure statement and DCAA issued audit reports on 15 May 2007, 28 September 2007, and 3 February 2009, each of which stated that Boeing's disclosure statement adequately reflected the company's accounting practices (R4, tab 3 at G-000144, tab 5 at G-000162, tab 6 at G-000172).

23. Trouble began on 6 June 2012, when DCAA issued a memorandum rescinding these audit reports because, it contended, it had discovered 17 inadequacies not disclosed in its earlier reports (R4, tab 8). DCAA thereafter issued several memoranda containing what it described as rough orders of magnitude for the changes (R4, tabs 10, 11, 12). In each memorandum, DCAA stated that the actual costs could be "significantly different" than it was estimating and that a cost impact proposal in accordance with FAR 30.604 would provide a better estimate of the potential impact (R4, tab 12 at G-000202).

24. On 8 February 2013, Gary Young, a DCMA DACO, issued a contracting officer's final decision demanding \$647,042, plus compound interest of \$218,233 from 1 January 2007 to the date of the decision (R4, tab 14). According to Mr. Young, DCAA concluded that 11 of the 17 purported inadequacies resulted in increased costs to the government (*id.* at G-000219).

25. The CO stated that, pursuant to FAR 30.604(i)(2), the government had the option of recovering the amount due by adjusting one contract, some but not all contracts, all contracts, or any other suitable method (R4, tab 14 at G-000221). The CO stated that he would unilaterally adjust a single contract, namely contract number FA8807-05-C-004 (the "Contract"), which, he stated was "physically active" during the effective date of the accounting changes and remained active at the time of the final decision (*id.*).

26. The parties had executed the Contract on 18 March 2005 (R4, tab 1).

DECISION

I. Standard of Review

Boeing has filed a motion to dismiss contending that we do not possess jurisdiction because the government's claim is untimely. The relevant provision of the CDA provides that "[e]ach claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer." 41 U.S.C. § 7103(a)(3). The CDA provides that a claim must be submitted within 6 years after the accrual of the claim. 41 U.S.C. § 7103(a)(4)(A). The Board does not possess jurisdiction to consider untimely claims. *Arctic Slope Native Ass'n v. Sebelius*, 583 F.3d 785, 793 (Fed. Cir. 2009); *The Boeing Co.*, ASBCA No. 57490, 12-1 BCA ¶ 34,916 at 171,676.

The government, as the proponent of the Board's jurisdiction, bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exchange Service*, 846 F.2d 746, 748 (Fed. Cir. 1988); *Raytheon Missile Systems*, ASBCA No. 58011, 13 BCA ¶ 35,241 at 173,016. However, disputed facts are subject to our fact-finding based upon a review of the record. *Raytheon Missile Systems*, 13 BCA ¶ 35,241 at 173,016 (citing *Inchcape Shipping Services*, ASBCA No. 57152 *et al.*, 10-2 BCA ¶ 34,578 at 170,475-76); *see also Cedars-Sinai Medical Center v. Watkins*, 11 F.3d 1573, 1584 (Fed. Cir. 1993).

The CDA does not specify when a claim accrues. Thus, we rely upon the definition in FAR 33.201. *The Boeing Co.*, 12-1 BCA ¶ 34,916 at 171,672. On 18 March 2005 (the date the parties executed the contract), that section provided:

Accrual of a claim means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

Once a party is on notice that it has a potential claim, the statute of limitations can start to run. *Gray Personnel, Inc.*, ASBCA No. 54652, 06-2 BCA ¶ 33,378 at 165,476. When monetary damages are alleged, some extra costs must have been incurred before liability can be fixed and a claim accrued, but there is no requirement that a sum certain be established. *Id.*

II. Boeing's Actions Did Not Trigger Accrual of the Government Claim

We hold that Boeing's motion is governed by our decision in *Raytheon Company, Space & Airborne Systems*, ASBCA No. 57801 *et al.*, 13 BCA ¶ 35,319. In *Raytheon*, the appellant submitted to the government multiple revisions to its CAS Disclosure Statement. Raytheon submitted Revision 1 to its Disclosure Statement in February 2004 notifying the government of a change effective on 1 January 2004 but it did not identify the potential dollar impact or even state whether the changes would cause a positive or negative impact on the government. With respect to a GDM, Raytheon did not specify the potential shift of costs between CAS-covered contracts by contract type, nor address the impact on funds from the various departments and agencies affected. Raytheon advised that a GDM would be submitted at a later date. Subsequently, Raytheon notified the government of a dollar cost impact in April 2006. The CO issued a final decision asserting the government claim in July 2011. *Raytheon*, 13 BCA ¶ 35,319 at 173,374.

The Board denied Raytheon's motion to dismiss this claim as untimely, holding that the claim did not accrue until Raytheon submitted the dollar cost impact in April 2006. *Raytheon*, 13 BCA ¶ 35,319 at 173,376. The Board rejected Raytheon's contention that the claim accrued in February 2004 when it notified the government of a change effective on 1 January of that year. The Board concluded that, while the government knew that there had been a change, it did not know that it had a cause of action until Raytheon submitted the cost impact information.

In addition, the Board rejected Raytheon's contention that, because the government had access to its accounting system, then the government should have known of the existence of the claim in February 2004. The Board held that it was not reasonable for the government to have to pursue this claim on its own in light of FAR 52.230-6(a), which places the burden on the contractor to submit a GDM. *Raytheon*, 13 BCA ¶ 35,319 at 173,376.

By contrast, the Board dismissed government claims in *Raytheon* where the appellant had submitted cost impact information. For example, in a November 2004 Revision 3 to its disclosure statement, Raytheon reported changes that would go into effect on 1 January 2005 and provided cost impact information for those changes. It followed up with a GDM in February 2005. The CO did not issue a final decision asserting the government claim until July 2011. *Raytheon*, 13 BCA ¶ 35,319 at 173,374-75.

In granting Raytheon's motion to dismiss the claim as untimely, the Board held that the statute began to run on 1 January 2005 because Raytheon had notified the government that adverse cost impacts would begin on that date. It rejected the government's contention that the statute should not begin to run on that date because

Raytheon had not provided the level of information and supporting data required by FAR 52.230-6. *Raytheon*, 13 BCA ¶ 35,319 at 173,377. The Board held that it was enough for limitations purposes that the contractor had provided the government a dollar cost impact from the change, even if that amount was not finalized or a fuller analysis would follow. *Id.*

The facts in this case are closer to those presented by *Raytheon* Revision 1 than to Revision 3. There is simply nothing in the record that Boeing can point to that compares to *Raytheon* Revision 3, in which the contractor told the government at the same time that it provided notice of the accounting change that the cost impact would be an increased cost allocation of \$367,100 to flexibly priced contracts and a decreased cost allocation to firm-fixed-price contracts of \$298,300. *Raytheon*, 13 BCA ¶ 35,319 at 173,374-75.

As in *Raytheon*, the Contract incorporated FAR 52.230-2, COST ACCOUNTING STANDARDS (APR 1998), and FAR 52.230-6, ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999) (SOF ¶ 4). FAR 52.230-2 requires contractors, among other things, to submit a Disclosure Statement that discloses its cost accounting practices as required by 48 C.F.R. 9903.202-1 through 9903.202-5 and to amend that statement when it changes its accounting practices. FAR 52.230-2(a)(1)-(2).

FAR 52.230-6 requires contractors to submit to the CO a description of any cost accounting practice change; the total potential impact of the change on contracts containing a CAS clause; and a GDM of the change which identifies the potential shift of costs between CAS-covered contracts by contract type and other contractor business activity. FAR 52.230-6(a). With respect to CAS-covered contracts, the analysis must identify the potential impact on funds of the various federal agencies. Contractors must submit these documents at least 60 days before the effective date of the proposed change. FAR 52.230-6(b)(2).

In this case, the record clearly demonstrates that Boeing did not comply with these contract clauses even though the CO repeatedly brought them to its attention and directed it to comply. He requested a GDM or cost impact information on 21 November (SOF ¶¶ 3-5) and 29 December 2006 (SOF ¶¶ 10-13), and 2 February 2007 (SOF ¶ 18). In its presentation to the government on 29 November 2006, Boeing promised to provide a cost impact submission “shortly” (SOF ¶ 6). According to a 2 February 2007 letter from Mr. Caudill to Boeing, Boeing also represented that it would provide the GDM by 19 January 2007, but failed to do so (SOF ¶ 18). Despite these requests from the CO and Boeing’s promise to comply, Boeing failed to do so, at least prior to 8 February 2007 (SOF ¶ 21).

In the agenda attached to his 29 December 2006 email to Boeing, Mr. Caudill contended that he could not make a determination as to the reasonableness of the proposed changes due to the lack of cost data showing the impacts and the shift of costs among the major programs (SOF ¶ 13). Mr. Caudill acknowledged that Boeing had provided briefings on the consolidation but stated that none of the briefings had identified the values of costs transfers between Anaheim and Huntington Beach, nor had Boeing submitted a GDM (*id.*). Thus, Boeing's failure to provide information it was contractually bound to furnish likely played some role in the government's delayed presentation of its claim.

Finally, Boeing contends that the government had access to its accounting records, enabling the government to calculate a GDM, but we have already held that the government should not have to pursue cost impact information on its own where the FAR places the burden on the contractor to submit the GDM, at least in the first instance. *Raytheon*, 13 BCA ¶ 35,319 at 173,376. As one commentator has succinctly put it, *Raytheon* "serves as a reminder of the importance of complying with the requirement in FAR 52.230-6...to submit both a revised disclosure statement and cost impact assessment before making a unilateral change to cost accounting practices." Karen L. Manos, *Government CAS Claim Barred by Statute of Limitations*, ¶ 33 GOVERNMENT CONTRACT COSTS, PRICING & ACCOUNTING REPORT (July 2013).

III. Boeing Has Not Shown It Provided the Government Sufficient Information in the Absence of a GDM

In its briefs, Boeing acknowledges that it did not submit a GDM or detailed cost information prior to 8 February 2007. However, it attempts to cobble together various pieces of evidence to contend that the government had constructive knowledge of its claim by 2 February 2007. This evidence consists of March 2014 deposition testimony by Mr. Caudill (the contracting officer), along with its PowerPoint presentations and the communications the parties exchanged from July 2006 to February 2007.

A. The Deposition of DACO Caudill

With respect to the deposition testimony of Mr. Caudill, in addition to our inability to assess the witness' demeanor or credibility, we find that its probative value is limited by the following factors: 1) he testified more than 7 years after the events in question; 2) he was retired (app. mot., ex. 2 at 5); and 3) we have been provided only excerpts of the transcript. In general, what we gather from these excerpts is that Mr. Caudill's memory of the events in question is hazy, which is not surprising given the number of years that had passed and his retirement. (*See, e.g., id.* at 15 ("I don't recall any conversations specifically with Gary Fleming or anyone else"); app. reply, ex. 1 at 54 (struggling to remember the name of his boss). Thus, while Boeing relies on his testimony to contend in its reply brief that Mr. Caudill "expected the site

consolidation to have a negative impact on the government” (app. reply at 8-9), taken as a whole, the testimony does not support this assertion. For instance, Mr. Caudill, in response to a question as to whether he had any particular concerns about the accounting changes, testified “I think my concern was I didn’t know what they were, I didn’t know what the impact would be, so I had no idea how they would affect the contracts” (app. br., ex. 2 at 43-44). For all of these reasons, we consider the contemporaneous documents, not Mr. Caudill’s deposition testimony, to be the best evidence of what the government knew.

B. Other Documents in the Record

With respect to the contemporaneous documents, the problem for Boeing is that these documents, taken as a whole, simply do not explain how the various items that Boeing was juggling translated into cost accounting practice changes that increased costs to the government. Thus, while Boeing focuses on the Anaheim/Huntington Beach consolidation in its briefs, the 29 November 2006 presentation to the CO entitled “2007 Accounting Changes/Reorganization Presentation” had seven items on the agenda (supp. R4, tab 3 at B00009). While one of these items was “Accounting Changes (Anaheim and Huntington Beach Consolidation),” other items on the agenda included “United Launch Alliance” (ULA) and “Phantom Works (PW) [REDACTED REDACTED REDACTED].” There is little or no explanation in the briefs as to how these events may or may not have been involved in cost accounting practice changes that allegedly increased costs to the government. (*Id.*)

It is notable that Boeing relies so heavily on PowerPoint slides rather than a clear statement to the CO that the accounting changes would increase costs to the government. The document that Boeing puts the most weight on seems to be slide 35 of its 31 January 2007 presentation concerning its recent forward pricing rate proposal (supp. R4, tab 7 at B00348). According to Boeing, this slide discloses about [REDACTED] in cost increases to the government (app. reply, ex 3, ¶ 6). But how this slide and the [REDACTED] translate into the \$647,042 in cost increases related to cost accounting practice changes is not clear. Moreover, the next slide (36) discusses “Impact by Cause” and seems to indicate cost decreases that would offset the cost increases on slide 35, but neither party addresses this slide in its brief (supp. R4, tab 7 at B00349).

Other slides raise questions as well. Slides 5-7 deal with the ULA, which the briefs do not explain. However, the slides indicate that ULA is a joint venture that Boeing formed with Lockheed Martin, that this program [REDACTED], and they seem to indicate that by 2008 [REDACTED] will have a significant cost impact. (Supp. R4, tab 7 at B00318-20) Similarly, in a slide entitled “Major Cost Drivers,” ULA and the [REDACTED] are discussed separately from the Huntington Beach/Anaheim consolidation (*id.* at B00334). The slide also lists significant

Lockheed Martin Corporation, rather than a lesser rate provided for in its CAS Disclosure Statement. The CO issued a final decision asserting a government claim for more than \$10 million, but not until November 2011, more than 11 years after the price proposal. The Board held that the government's claim was untimely because the 1999 price proposal disclosed that the Lockheed contract was receiving full burden and was, therefore, "perfectly knowable in 1999." *Raytheon*, 13 BCA ¶ 35,241 at 173,017.

We disagree with appellant that the earlier *Raytheon* decision (13 BCA ¶ 35,241) governs this appeal. Because the price proposal in that case clearly communicated the precise burden it would charge the government, the statute began to run. *Raytheon*, 13 BCA ¶ 35,241 at 173,017. By contrast, there is no document (or combination of documents) in the record that Boeing can point to that is comparable to that price proposal. *Accord Raytheon Co. v. United States*, 104 Fed. Cl. 327 (2012) (limitations period began to run based on an "Advance Agreement" in which contractor detailed its costs by year and explained its position as to why they were allowable, allocable, and reasonable).

D. The 19 January DS-1

The government may not be entirely out of the woods on the statute of limitations issue. In its brief, the government appears to concede that a Disclosure Statement revision may trigger the accrual of the statute of limitations (gov't resp. at 5-6). The government contends that it did not receive an adequate DS-1 until 16 February 2007, and that this date is the earliest possible date at which its claim could have accrued. Boeing has seized upon this possible concession in its reply, submitting a new declaration in which it contends that the substantive information conveyed in the 19 January and 16 February 2007 DS-1s "was indistinguishable" (app. reply, ex. 2, ¶ 10). If a DS-1 is enough to trigger the statute of limitations and Boeing had already provided all information of significance in the 19 January DS-1, then it is possible that the government's claim should be dismissed.

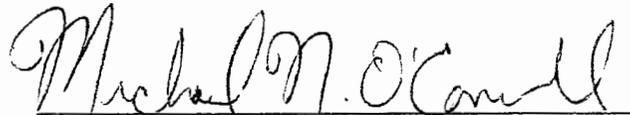
However, what the government fails to point out is that, in addition to the revised DS-1, Boeing also finally submitted a GDM on 16 February 2007 (supp. R4, tab 11 at B00382). Indeed, the government seems not to be aware of this GDM because it asserts in its brief that it still has not received cost impact information from Boeing concerning the 16 February 2007 DS-1 (gov't resp. at 6). Based on our precedent in *Raytheon* discussed above, *see* 13 BCA ¶ 35,319 at 173,377, this GDM submission likely triggered the statute of limitations but that date is fewer than six years before the government's claim.

The government's statement that the 16 February Disclosure Statement could trigger the limitations period is curious given that, in the more recent *Raytheon* appeal, it successfully took the position that a Disclosure Statement revision, by itself, did not start the clock. *Raytheon*, 13 BCA ¶ 35,319 at 173,376. Nevertheless, in light of the government's brief in this appeal, we are left with the question: did Boeing's 19 January DS-1 trigger the statute? This DS-1 is 100 pages long and is written in a manner that assumes a high level of familiarity with cost accounting in general and in Boeing's specific cost accounting practices. Neither party has identified specific language in this document that demonstrates why (or why not) the statute began to run. We will not perform the analysis of this technical document on our own.

CONCLUSION

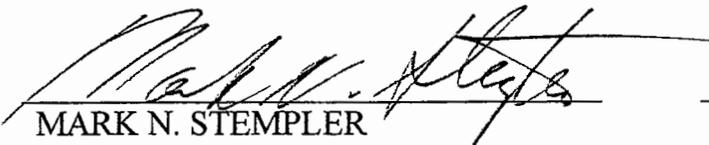
For the reasons stated, we deny without prejudice appellant's motion to dismiss this appeal for lack of jurisdiction. Within one month of the date of this order, the parties shall submit a joint status report proposing further proceedings, along with a schedule.

Dated: 6 November 2014



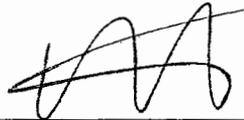
MICHAEL N. O'CONNELL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMPLER
Administrative Judge
Chairman
Armed Services Board
of Contract Appeals

I concur



RICHARD SHACKLEFORD
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 58660, Appeal of The Boeing Company, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals