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ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -	)	
	)	
Watts Constructors, LLC	)	ASBCA No. 63753
	)	
Under Contract No. W91238-14-C-0040	)	

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OPINION BY ADMINISTRATIVE JUDGE SWEET
ON THE GOVERNMENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This appeal involves a contract between the United States Army Corps of Engineers (government or USACE) and the appellant Watts Constructors, LLC (Watts) for Watts to construct a Satellite Earth Terminal Station Facility at Camp Roberts, California. Watts filed a certified claim with the contracting officer (CO) for, *inter alia*, additional time and money resulting from various alleged government delays. The CO

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denied that claim, and Watts filed this appeal. The government now moves for partial summary judgment (Motion), arguing that some of Watts' delay claims were untimely under the statute of limitations. As discussed in greater detail below, the statute of limitations bars one—but not all—of the delay claims upon which the government bases the Motion because only one claim accrued more than six years before Watts filed a certified claim. Thus, we grant the motion in part, and deny it in part.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

I. Introduction

1. On September 3, 2014, the government awarded to Watts Contract No. W91238-14-C-0040 (Contract), a design-bid-build contract for a Satellite Communications Earth Terminal Station Facility at Camp Roberts, California. (R4, tab 16 at 1; GSUMF ¶ 2).¹ The Contract required the government to provide, *inter alia*, uninterruptable power supply (UPS) and switchgear equipment (collectively, Equipment) for the Operations Center (OPS Building) and the modernization and enterprise terminal sites (METS Building) (app. supp. R4, tab 189 at 76-77; ASUMF ¶ 35).

2. The government issued a notice to proceed on September 19, 2014, with an original contract completion date of June 30, 2016 (R4, tab 17 at 1).

II. Site Access Limitations

3. On February 26, 2015, the government suspended work on the project due to limited site access (app. supp. R4, tabs 194, 271; GSUMF ¶ 11). On May 21, 2015, the government lifted that suspension (app. supp. R4, tab 209; GSUMF ¶ 12).

4. On September 30, 2015, Watts submitted a cost proposal for the suspension, indicating that the suspension increased the time required to complete the project by 114 days and Watts' costs by \$1,130,626 (R4, tab 36 at 1, 10).²

5. To address the suspension, the parties executed bilateral Modification Nos. A00001/R00001 and P00002 on February 4, 2016 and September 30, 2016, which

¹ "GSUMF" refers to the government's statement of undisputed material facts, and Watts' response to that statement of undisputed material facts. "ASUMF" refers to Watts' statement of undisputed material facts, and the government's response to that statement of undisputed material facts.

² All days in this decision are calendar days (cds).

extended the contract completion date by 114 days and increased the contract price by \$624,957.21 respectively (R4, tab 18; app. supp. R4, tab 271).

III. Procuring the Equipment

6. On April 24, 2015, Watts sent the government a request for information seeking, *inter alia*, submittal data or product documentation for the UPS equipment (R4, tab 101; ASUMF ¶ 36). The government did not provide the supporting submittal information on the UPS equipment. Instead, the government responded on June 3, 2015, stating that a modification was in progress to revise the government furnished contractor installed (GFCI) equipment. (ASUMF ¶ 37)

7. On September 24, 2015, the government issued request for proposal 0008 (RFP 0008), which requested that Watts submit a proposal for Watts—as opposed to the government—to provide the Equipment (R4, tab 35 at 1).

8. Watts' September 30, 2015 schedule narrative report indicated that, “[p]er RFP 0008-UPS and Switchgear for METS/OPS, Watts will now be furnishing and installing the UPS and Switchgear that was previously Government Furnished. The drop-dead date for the submittal information was 17-August-2015. Depending on the Modification, submittal, and procurement process, this could still cause delay.” (R4, tab 149 at 1)

9. On October 30, 2015, Watts submitted to the government a cost proposal in response to RFP 0008 in the amount of \$3,792,541 for direct costs. The cost proposal indicated that “[a]ll schedule impacts and associated costs related to this RFP will be negotiated with a separate RFP.” (App. opp’n, ex. 1 at 1; GSUMF ¶ 18). On the same day, Watts sent the government a letter stating that:

This letter is in reference to RFP 0008 Within our proposal response we have not included any time or cost impacts for the current impacts and any future delays. As such we request verbiage to this effect be included in any modification as part of this proposal. As of this time, these delays are not quantifiable due to the unknown time frame it will take to negotiate and receive a modification, submit and receive approved material submittals, then install the conduit. The conduit installation within quadrant “B” of the SATCOM building is the current delay and depending on the aforementioned sequence of events the manufacturing of the

equipment and installation of such could have impacts in the future.

On 10/28/15 a meeting was held . . . to review all outstanding electrical issues and to determine if a location for the UPS/Switchgear could be made. During this meeting[,]
Helix[, Watts' subcontractor,] and Watts again notified the Government that the UPS/Switchgear supplier will not release any shop drawings or information without a Purchase Order. Without approved shop drawings Helix is unable to install the electrical conduits for the gear, which impacts installation of plumbing, concrete footings and slab work.

(R4, tab 37)

10. The government never provided the Equipment or supporting submittal information, as required by the Contract. Instead, the parties executed bilateral Modification No. R00004 on July 6, 2016, which increased the contract price by \$3,647,675 and required Watts to provide the Equipment. Modification No. R00004 indicated that “[t]he delays associated with this work are not quantifiable at this time,” and thus that the parties would negotiate a separate modification to address time. (R4, tab 19 at 1-2, 5)

11. Between October 17, 2016 and December 22, 2016, Watts submitted—and the government approved—submittals for the OPS Building UPS system and underground electrical conduit layout (R4, tabs 106-07, 109; ASUMF ¶¶ 51-53). Upon receipt of the approved submittals, Watts was able to order the underground conduits, which were delivered to the project site on February 20, 2017 (ASUMF ¶ 54). Thereupon, Watts commenced work in Area B of the OPS Building with installation of the underground conduits for the added OPS Building switchgear (ASUMF ¶ 55).

12. Following negotiations (ASUMF ¶¶ 57-60), the government sent Watts unilateral Modification No. P00005 on June 7, 2017 (app. supp. R4, tab 311; ASUMF ¶ 61). Modification No. P00005 addressed the Equipment delays by increasing the contract price by \$2,480,450 and extending the contract completion date by 318 days (*id.*).

13. The final modified contract completion date was July 19, 2018 (R4, tab 31 at 1-2; ASUMF ¶ 16). Watts achieved substantial completion on January 6, 2020 (R4, tab 31 at 2; GSUMF ¶ 5).

IV. Procedural History

14. On June 10, 2022, Watts submitted a certified claim (Claim), which attached, and relied upon, a March 21, 2022 Time Impact Analysis (TIA) (R4, tab 9).³ The Claim sought a time extension until January 6, 2020, \$5,493,720, rescission of liquidated damages, release of the contract balance, and a change to Watts' contractor performance assessment reporting system rating (*id.* at 1). In the Claim, Watts asserted that it experienced 1,285 days of delay, consisting of 864 days of government-caused delays, 85 days of contractor-caused or subcontractor-caused delays, and 336 days of concurrent delays (*id.* at 8). Nevertheless, the Claim provided a 114-day credit to the government, stating that:

[T]here are 864 days of delay for which the Government is solely responsible, resulting in 864 compensable days of delay. However, Watts accepts the time extension granted in Mod P00002 of 114 calendar days. As a result, Watts is only seeking 750 days of extended general conditions costs for itself and Helix in this certified claim.

(*Id.* at 2 n.1) In its Claim, Watts did not seek any additional time or compensation for the suspension beyond the 114 days and the \$624,957.21 that Modification Nos. A00001/R00001 and P00002 respectively already had provided (*id.*; ASUMF ¶¶ 32-33).

15. In particular, the Claim and the TIA identified three delays that are relevant to the Motion (R4, tab 9 at 7, 30). First, the TIA asserted that the planned start of the critical-path Ops Building foundations was September 4, 2015 (*id.* at 36). However, government-delays in providing information on the Equipment for that building delayed the start of the building foundations by 19 days, until September 23, 2015 (GFCI Equipment Delay)⁴ (*id.* at 7, 36). The TIA explained the GFCI Equipment Delay as follows:

³ The Claim and the TIA divided the project into seven time-periods (R4, tab 9 at 7-8, 30-31). For purposes of deciding the Motion, three time-periods are relevant: (1) Time Period 1 (from February 20, 2015 to June 30, 2015); (2) Time Period 2 (from June 30, 2015 to September 30, 2015); and (3) Time Period 3 (from September 30, 2015 to March 1, 2017) (*id.* at 30).

⁴ The Claim and the TIA referred to that 19 day delay as "Delay to Completion of Ops Building Rough Grading/USACE failure to provide GFCI equipment info for underslab utility rough-in at Ops Building" (R4, tab 9 at 7, 30). For ease of reference, we shorten that name to "GFCI Equipment Delay."

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USACE did not provide Watts with the required UPS and switchgear equipment information in the Contract Documents, which was necessary for Watts to complete its underground conduit design. Indeed, Watts needed the design information to construct the critical path Ops Building foundations and slab-on-grade and properly coordinate its trades. USACE's failure to timely provide the required information resulted in extending the overall required duration for the Ops Building.

On September 24, 2015, USACE issued its RFP-0008 entitled UPS and Switchgear for METS/Ops Building that requested Watts, and not USACE, [to] procure the UPS and switchgear equipment for both the Ops . . . and METS Buildings. Under the Contract Documents, Watts was not required to procure the equipment.

Although Watts started the Ops Building foundations, it could only begin work at unimpacted Areas A, C, and D as a way to mitigate the delay caused by USACE's failure to timely procure the Ops and METS Building UPS and switchgear equipment. Watts' 30Sep15 Schedule Update did not forecast an impact from RFP-0008 as the RFP was issued just before the schedule data date, therefore the full extent of the impact was unknown. However, it was clear that USACE had extended the overall required duration for the Ops Building because of [a] lack of information needed by Watts to perform its critical path work.

(*Id.* at 36-37) Nevertheless, the Claim and the TIA acknowledged that the entire GFCI Equipment Delay was concurrent delay because delays by Watts' subcontractor in performing site grading activities also delayed the start of the building foundation (*id.* at 7, 37). Thus, the TIA asserted that it would "account for forecasted delays as they are either actualized or recovered in the subsequent time periods of this analysis" (*id.* at 37).

16. Second, the Claim and the TIA asserted that, even after the start of the Ops Building foundation on September 24, 2015, continued delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting

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submittal information adversely impacted the start of the critical-path foundation rebar activity in Ops Building Area B by 287 days, until July 6, 2016, when the government issued Modification No. R00004 requiring Watts to procure the Equipment (Delay to Modification No. R00004 Issuance) (R4, tab 9 at 7, 36-37, 40-41). The TIA explained the Delay to Modification No. R00004 Issuance as follows:

USACE issued Modification No. R00004 on July 6, 2016, or 286 cd later than the September 24, 2015 issuance of the RFP, and 287 cd after Watts' September 23, 2015 actual start of critical path Ops Building foundation concrete work. USACE failed to timely issue unilateral Mod R00004 preventing Watts from procuring the UPS and switchgear for the METS and Ops Building and preventing Watts from accurately reflecting the delay in its monthly updates at the time the impact occurred.

(*Id.* at 41) The TIA showed that the 287-day Delay to Modification No. R00004 Issuance occurred from September 23, 2015 to July 6, 2016 (*id.*).

17. Third, the Claim and the TIA asserted that, following the issuance of Modification No. R00004 on July 6, 2016, Equipment submittal approval and procurement delays further delayed the completion of the underground conduit material procurement by 229 days, until February 20, 2017 (Submittals and Procurement for Switchgear/UPS Delay) (R4, tab 9 at 7, 42). The TIA explained that the Submittals and Procurement for Switchgear/UPS Delay as follows:

Following USACE issuance of Mod R00004, Watts proceeded to draft and transmit submittals for the UPS and switchgear, which were approved by USACE on October 17, 2016. Watts also submitted the subsequent underground electrical design, which was approved by USACE on December 22, 2016, or an overall duration of 169 cd[s] from the date USACE issued Mod R00004 through completion of submittals. Watts completed procurement of the required underground conduit materials on Feb 20 2017, or 60 cd[s] later. The overall submittal and procurement duration required 229 cd[s] to resolve.

(*Id.* at 42) The TIA showed that the 229-day Submittal and Procurement for Switchgear/UPS Delay occurred from July 6, 2016 through February 20, 2017 (*id.*).

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18. However, according to the TIA, Watts issued a schedule update on March 1, 2017, which mitigated the overall impact of those alleged government-caused delays by 83 days through the performance of work in Areas A, C, and D out of sequence (*id.* at 43-45). Nevertheless, the Claim and the TIA offset that 83-day mitigation credit for out-of-sequence work by the 19-day concurrent GFCI Equipment Delay (*id.* at 7, 45).

19. On August 21, 2023, the government issued a final decision denying the Claim (R4, tab 11).

20. This appeal followed.

DECISION

The government is entitled to summary judgment on one—but not all—of the purported delay claims upon which it bases the Motion.

I. Summary Judgment Standard

We will grant summary judgment only if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). All significant doubt over factual issues must be resolved in favor of the party opposing summary judgment. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987). In deciding summary judgment motions, we do not resolve controversies, weigh evidence, or make credibility determinations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Moreover, we draw all reasonable inferences in favor of the non-movant. *Id.* A genuine issue of material fact arises when the non-movant presents sufficient evidence upon which a reasonable fact-finder, drawing the requisite inferences and applying the applicable evidentiary standard, could decide the issue in favor of the non-movant. *C. Sanchez & Son, Inc. v. United States*, 6 F.3d 1539, 1541 (Fed. Cir. 1993).

II. Statute of Limitations

The government argues that there is no genuine issue of material fact but that the statute of limitations bars any claims regarding the suspension of work, GFCI Equipment Delay, Delay to Mod R00004 Issuance, and the Submittals and Procurement Delay (gov't mot. at 12-13). Under the Contract Disputes Act (CDA), "[e]ach claim by a contractor against the Federal Government relating to a contract . . . shall be submitted within 6 years after the accrual of the claim." 41 U.S.C. § 7103. The CDA does not define the term "accrual of the claim," but the Federal Acquisition Regulation (FAR)—to which we look, *Patricia I. Romero, Inc., d/b/a/ Pacific West Builders*, ASBCA No. 63093, 23-1

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BCA ¶ 38,362 at 186,288—defines that term as “the date when all events, that fix the alleged liability of . . . the Government . . . 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.” FAR 33.201, DEFINITIONS. Because the statute of limitations is an affirmative defense, it is the burden of the party asserting the defense to prove it applies. *Patricia I. Romero*, 23-1 BCA ¶ 38,362 at 186,288. Ascertaining claim accrual is a fact-intensive inquiry that is done on a case-by-case basis. *Lockheed Martin Aeronautics Co.*, ASBCA No. 62209, 22-1 BCA ¶ 38,112 at 185,128. As discussed in greater detail below, there is a genuine issue of material fact as to whether the statute of limitations bars any claims regarding the suspension, the GFCI Equipment Delay, and the Submittals and Procurement Delay. However, there is no genuine issue of material fact but that the statute of limitations bars Watts’ Delay to Mod R00004 Issuance claim.

A. Suspension Delay

Watts is not asserting a claim regarding the suspension, so there is no claim for the statute of limitations to bar. As a result of the suspension, bilateral Modification Nos. A00001/R00001 and P00002 extended the contract completion date by 114 days, and increased the contract price by \$624,957.21, respectively (SOF ¶ 5). In its Claim, Watts did not seek any additional time or compensation for the suspension beyond that provided by Modification Nos. A00001/R00001 and P00002 (SOF ¶ 14). Rather, the Claim merely identified the 114-day extension as a credit to the government (*id.*). Therefore, there is no suspension delay claim for the statute of limitations to preclude.

B. Purported GFCI Equipment Delay Claim

Watts has raised a genuine issue of material fact as to whether the statute of limitations bars any claim regarding the GFCI Equipment Delay. Watts argues that, because the GFCI Equipment Delay was non-compensable concurrent delay that it merely offset against a mitigation credit to the government for advancing areas A, C and D of the Ops Building in the March 1, 2017 schedule update, Watts did not know, and should not have known, of the events fixing the government’s liability for that offset until at least when the mitigation occurred in the March 1, 2017 schedule (app. opp’n at 9-10). In its reply, the government fails to respond to that argument (*see gov’t reply*). Watts is correct that the TIA merely offsets the 19 days of concurrent GFCI Equipment Delay against a mitigation credit to the government in the March 1, 2017 schedule (SOF ¶ 18). Absent any evidence—or even argument—to the contrary from the government, that raises a genuine issue of material fact as to whether Watts knew, or should have known, of all the events that fixed the government’s liability for the offset prior to the mitigation occurring in the March 1, 2017 schedule. Indeed, Watts could not have known that there

would be a mitigation credit to offset until the March 1, 2017 schedule established that mitigation.

C. Delay to Modification No. R00004 Issuance Claim

1. The Statute of Limitations Bars the Delay to Modification No. R00004 Issuance Claim

There is no genuine issue of material fact but that the statute of limitations bars Watts' Delay to Modification No. R00004 Issuance claim. For government-caused delay claims, the claim accrues when the wrongful acts or omissions allegedly committed by the government that caused the delay occurred, and the contractor knew, or should have known, of the delay-causing event. *Restoration Specialists, LLC*, ASBCA No. 63284, 23-1 BCA ¶ 38,466, at 186,960-61. Moreover, "[t]he events fixing liability are presumed to have been known when they occurred unless it is reasonable to find they have been either concealed or were inherently unknowable at the time." *Id.* at 186,961 (quotation omitted). At a minimum, we agree with a decision by the United States Court of Federal Claims which held that a contractor knows, or should know, of a claim that the government's untimely issuance of a modification was causing delay when the contractor notified the government of the delay's adverse impact upon construction. *Al-Juthoor Contracting Co. v. United States*, 129 Fed. Cl. 599, 614 (Fed. Cl. 2016).

Here, Watts' Delay to Modification No. R00004 Issuance claim is that the government's alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information adversely impacted the start of the critical-path foundation rebar activity in OPS Building Area B from September 23, 2015 to July 6, 2015 (SOF ¶ 16). Thus, the events that fixed the government's alleged liability and permitted the assertion of the claim were the government's alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information, adversely impacting the start of critical-path foundation rebar activity in OPS Building Area B. According to the Claim and the TIA, the government's delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information began adversely impacting the critical path foundation rebar activity in the Ops Building Area B by September 2015 (*id.*).

Moreover, there is no genuine issue of material fact but that Watts knew, or should have known, of those events fixing the government's alleged liability by September or October of 2015. First, there is no evidence suggesting that the government concealed the purported delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information, or that that purported

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fact was inherently unknowable at the time. On the contrary, the undisputed evidence shows that, instead of providing the Equipment or supporting submittal information in response to an inquiry from Watts about the government's failure to provide the supporting submittal information, the government notified Watts on June 3, 2015 and September 24, 2015, that it planned on issuing a modification to have Watts provide the Equipment (SOF ¶¶ 6-7). Yet, Watts was aware that the government did not issue that modification to Watts until July 6, 2016, and did not deliver the Equipment or supporting submittal information in the interim (SOF ¶ 10).

Nor is there any evidence that the government concealed the fact that the alleged delay obtaining the Equipment and the supporting submittal information was delaying construction, or that that fact was inherently unknowable at the time. On the contrary, the undisputed evidence shows that Watts demonstrated its awareness of the fact that the alleged delay obtaining the Equipment and the supporting submittal information was delaying construction by notifying the government in the September 30, 2015 schedule narrative report that the "drop dead date for submittal information" had passed (SOF ¶ 8). Further, at an October 28, 2015 meeting, "Watts again notified the Government that the UPS/Switchgear supplier will not release any shop drawings or information without a Purchase Order. Without approved shop drawings Helix is unable to install the electrical conduits for the gear, which impacts installation of plumbing, concrete footings and slab work." (SOF ¶ 9). Moreover, in the October 30, 2015 letter, Watts notified the government that, "[t]he conduit installation within quadrant "B" of the SATCOM building is the current delay" (*id.* (emphasis added)). Indeed, in the TIA, Watts acknowledged that, while the full extent of the delay was unknown on September 30, 2015, "it was clear that USACE had extended the overall required duration for the Ops Building because of [the] lack of information needed by Watts to perform its critical path work." (SOF ¶ 15).

Because Watts knew, or should have known, in September or October of 2015 of the events that fixed the government's alleged liability and permitted the assertion of the Delay to Modification No. R00004 Issuance claim—namely, that the delays obtaining the Equipment and the supporting submittal information were adversely impacting construction—Watts' Delay to Modification No. R00004 Issuance claim accrued in September or October of 2015. However, Watts waited more than six years until June 10, 2022, to file its Delay to Modification No. R00004 Issuance claim (SOF ¶ 14). Therefore, the statute of limitations bars the Delay to Modification No. R00004 Issuance claim.

2. Watts' Arguments to the Contrary Are Meritless

Watts raises three main arguments to the contrary, none of which have merit. First, Watts argues that the Delay to Modification No. R00004 Issuance claim did not accrue until the government issued Modification No. R00004 on July 6, 2016, at the earliest because Watts did not have a duty to provide the Equipment until the government issued Modification No. R00004 (app. opp'n at 11, 15). However, that argument ignores the nature of Watts' Delay to Modification No. R00004 Issuance claim. "To determine when the alleged liability was fixed, we begin by examining the legal basis of the particular claim." *Hanley Indus., Inc.*, ASBCA No. 58198, 14- 1 BCA ¶ 35,500 at 174,016. Moreover, "the statute of limitations runs against each distinct liability-creating event having its own associated damages." *Patricia I. Romero*, 23-1 BCA ¶ 38,362 at 186,289. Here, the legal basis for the Delay to Mod R00004 Issuance claim is not that Watts' fulfilling its new duty to provide the Equipment pursuant to Modification No. R00004 after July 6, 2016, caused delay. That is the legal basis for the Submittals and Procurement Delay claim discussed below (SOF ¶ 17). Rather, the legal basis for the Delay to Modification No. R00004 Issuance claim is that delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information adversely impacted construction from when Watts was ready to start the Ops Building foundation on September 23, 2015, until the government issued Modification No. R00004 on July 6, 2016 (SOF ¶ 16). As discussed above, Watts knew, or should have known, of all of the events necessary to fix the alleged liability for that claim when the delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment began delaying the Ops Building foundation work in September or October of 2015.⁵

⁵ In support of its argument that the Delay to Mod R00004 Issuance claim did not accrue until the government issued Modification No. R00004 on July 6, 2016, at the earliest because Watts did not have a duty to provide the Equipment until the government issued Modification No. R00004 on July 6, 2016, Watts points to the hypothetical that the government could have changed its mind about requiring Watts to provide the Equipment until it issued Modification No. R00004. Watts argues that that would have nullified the Delay to Modification No. R00004 Issuance claim. (Opp'n 15-16) However, if the government changed its mind and decided not to issue Modification No. R00004 on July 6, 2016, it then would have had to deliver the Equipment to Watts under the original Contract terms on July 6, 2016. That would not nullify Watts' Delay to Modification No. R00004 Issuance claim because the government still allegedly would have delayed the start of the critical-path foundation rebar activity by delaying the procurement of the Equipment until July 6, 2016 through its untimely failure either to deliver—or

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Second, Watts argues that the Delay to Modification No. R00004 Issuance claim did not accrue until the government issued Modification No. R00004 on July 6, 2016, at the earliest because the delays were not quantifiable until the issuance of Modification No. R00004 (app. opp'n at 14, 16-17). Watts is correct that the TIA acknowledged that the full extent of the delay was unknown on September 30, 2015, and the October 30, 2015 letter acknowledged that the delays were not quantifiable on October 30, 2015 (SOF ¶¶ 9, 15). However, we have held that “[i]t is enough that some dollar figure can be placed on the claim, even if the total amount that will eventually be claimed cannot yet be determined.” *Patricia I. Romero*, 23-1 BCA ¶ 38,362 at 186,289. Thus, “[the] claimant need not be aware of the full impact of its increased costs/damages for its claim to accrue; however, for liability to be fixed at least some injury to the claimant must be shown.” *Lockheed Martin Corp.*, ASBCA No. 57525, 12-1 BCA ¶ 35,017 at 172,065. Here, as discussed above, there is no genuine issue of material fact but that Watts suffered at least some injury in September or October of 2015. The TIA asserted that it was clear on September 30, 2015, that the lack of information on the Equipment was extending the requirement duration (SOF ¶ 15). Moreover, the October 30, 2015 letter acknowledged that Watts currently was experiencing delay on October 30, 2025 (SOF ¶ 9). Because Watts suffered at least some injury in September and October of 2015 from the alleged delays obtaining the Equipment and the supporting submittal information, its claim accrued in September or October 2015, even though it was not aware of the full impact of that delay at that time.

Third, Watts argues that, under *Patricia I. Romero*, the Delay to Mod R00004 Issuance claim did not accrue until the government issued unilateral Modification No. P00005 on June 7, 2017, because only at that point did Watts know, or should it have known, that the government would not be compensating Watts adequately for the Equipment delays (app. opp'n at 18-21). Watts reads *Patricia I. Romero* too broadly. *Patricia I. Romero* merely held that a contractor knew, or should have known, that it suffered some injury by the time that the parties executed modifications that allegedly inadequately compensated the contractor. 23-1 BCA ¶ 38,362 at 186,289. The Board did not need to—and did not—address whether the contractor's claim may have accrued earlier because the Board found that the contractor failed to file its claim within six years of the modifications, and the parties did not dispute whether the claim accrued earlier. *Id.*; see also *Restoration Specialists, LLC*, ASBCA No. 63284, 23-1 BCA ¶ 38,466. Indeed, holding that the Delay to Mod R00004 Issuance claim did not accrue until the government issued unilateral Modification No. P00005 would be inconsistent with *Patricia I. Romero*. As discussed above, *Patricia I. Romero* held that the total amount of damage need not be determined for a claim to accrue. 23-1 BCA ¶ 38,362, at 186,289.

modify the Contract to require Watts to procure—the Equipment and the supporting submittal information (SOF ¶ 16).

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Here, as modification R00004 acknowledged, the reason that the government waited until the issuance of Modification No. P00005 to add time to the Contract for the Equipment delays was because the total amount of damage could not be determined earlier (SOF ¶ 10). Thus, to hold that Watts' Delay to Modification No. R00004 Issuance claim could not accrue until the issuance of Modification No. P00005 would require us to hold that a claim cannot accrue until the total amount of damage can be determined, which would be inconsistent with *Patricia I. Romero*, 23-1 BCA ¶ 38,362, 186,289; *see also Lockheed Martin*, 12-1 BCA ¶ 35,017, 172,065.

In sum, because none of Watts' arguments to the contrary have merit, its Delay to Modification No. R00004 Issuance claim accrued in September or October of 2016, and thus the statute of limitations bars that claim.

D. Submittals and Procurement Delay Claim

Watts has raised a genuine issue of material fact as to whether the statute of limitations bars its Submittals and Procurement Delay claim. According to Watts' certified claim, Watts' Submittals and Procurement Delay claim is that, following the issuance of Modification No. R00004, there were delays in the approval of Equipment submittals and the Equipment procurement from when the parties executed Modification No. R00004 requiring Watts to procure the Equipment on July 6, 2016, to the completion of Watts' procurement of the required underground conduit materials on February 20, 2017 (SOF ¶ 17). A reasonable fact-finder, drawing the requisite inferences and applying the applicable evidentiary standard, could decide based upon that evidence that Watts did not know, and could not have known, of the events fixing liability for that claim before the parties executed Modification No. R00004 on July 6, 2016. Because that is less than six years before Watts filed its certified claim on June 10, 2022, Watts has raised a genuine issue of material fact as to whether the statute of limitations precludes its Submittals and Procurement Delay claim. Accordingly, summary judgment is not appropriate.

DOCUMENT FOR PUBLIC RELEASE.

The decision issued on the date below is subject to an ASBCA Protective Order.

This version has been approved for public release.

CONCLUSION

For the reasons discussed above, the motion for summary judgment is granted in part, and denied in part, and we strike Watts' Delay to Modification No. R00004 Issuance claim.

Dated: September 25, 2025



JAMES R. SWEET
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



J. REID PROUTY
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. 63753, Appeal of Watts Constructors, LLC, rendered in conformance with the Board's Charter.

Dated:

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals