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Appeal of Quimba Software, Inc.

ASBCA No. 57636, Dec. 19, 2011 – Judge Delman

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In this case, the ASBCA considered whether Rule 6(d) of the Federal Rules of Civil Procedure (“FRCP”) applied to enlarge the Contract Disputes Act’s (“CDA”) deadline for filing an appeal of a Contracting Officer’s final decision. The board answered in the negative, dismissing the appeal and reaffirming the board’s strict adherence to the statutorily imposed 90- day deadline.

Quimba had been performing a cost-type contract for software awarded by the Air Force Research Laboratory in July of 2003. In November of 2010, the Defense Contract Audit Agency notified Quimba in writing that the Government intended to disallow certain deferred compensation costs Quimba had claimed in its fiscal year 2004 incurred cost proposal. After informing the Government of its preference that the parties correspond by email, on January 6, 2011, Quimba sent an email contesting the Government’s position on its incurred cost proposal. On March 4, 2011, the ACO emailed Quimba its final decision demanding payment of the unallowable deferred compensation costs. Quimba acknowledged receipt of the ACO’s final decision the same day.

Quimba filed its appeal with the ASBCA on June 3, 2011 – 91 days after the ACO’s final decision. In response to the Government’s motion to dismiss the appeal, Quimba argued that the deadline should be altered to account for Quimba’s having received notice via email rather than regular mail. Specifically, Quimba argued that the board should follow FRCP 6(d), which provides a party that consents to receiving notice via email an additional three days to act.

The Board rejected Quimba’s argument. According to the board, Rule 6(d) addresses the time given a party litigating in *federal* court but “does not address the statutory appeal period provided to a contractor upon receipt of a Contracting Officer’s decision under the CDA.” Under the CDA, 41 U.S.C. §7104(a), Quimba was required to file its appeal of the ACO’s final decision within 90 days of having been notified. Citing Quimba’s failure to meet this jurisdictional requirement, the board dismissed its appeal as untimely.

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Case Digests (cont'd):

At bottom, *Quimba* confirms agency boards' strict construction of the statutory deadline for filing an appeal. The Federal Rules of Civil Procedure, particularly Rule 6(d), does not provide any flexibility to a contractor appealing a Contracting Officer's final decision, even where the Government consents to email notification.