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## *Breach of Contract*

### **Directives Ending Contractor's Sponsorships Breached No-Cost Contract, CBCA Rules**

**T**he government breached a no-cost contract by ordering the termination of sponsorships that helped a contractor provide conference planning services for the Corps of Engineers, the Civilian Board of Contract Appeals ruled (*Impact Assocs. Inc. v. Gen. Servs. Admin.*, CBCA, No. 3552, 3/17/15).

Board Judge R. Anthony McCann said these directives fell outside the scope of the contract, and contract terms limiting the government's liability did not apply.

Lawrence Block of Reed Smith LLP told Bloomberg BNA the decision stands for two significant propositions: (1) no-cost contracting is a viable contracting method; and (2) the government may not extend its limitation of liability—an inherent component of no cost contracting—by interfering with a contractor's ability to be paid for services rendered.

"No-cost contracting is not a pathway for the government to obtain goods or services for free while the contractor has no ability to be paid from third parties," he said. "This would constitute 'voluntary services' and would violate the Anti-Deficiency Act."

**Corps Issued Order to GSA Contract Holder.** The General Services Administration and Impact Associates Inc. entered into a Federal Supply Schedule (FSS) contract for trade shows/exhibits and event planning services.

The Corps of Engineers then awarded a no-cost delivery order to Impact for technical assistance related to the "Unexploded Ordnance (UXO)/Countermines Forum 2006." The order included option items for the forum for 2007 through 2010.

For Forum 2009, Impact planned to secure commercial sponsors. However, the Army's Office of General Counsel said this was not allowed under ethics regulations.

Impact believed it lost revenues from refunded sponsorships by complying with this policy. Following the

submission of an unsuccessful claim, Impact appealed to the Armed Services Board of Contract Appeals.

That board said it lacked jurisdiction over the claim because resolving the dispute required a schedule contract interpretation from a GSA contracting officer (99 FCR 556, 5/7/13).

A GSA contracting officer granted Impact's claim. Impact then sought enforcement of this decision with the Civilian Board of Contract Appeals.

**Corps Took Action Beyond Contract's Scope.** The GSA agreed that the directives constituted a contract change, but argued both that the contract shielded the GSA from liability and that the claimed damages were not foreseeable.

The board disagreed. Although the task order allowed the government to change the nature of its involvement—including withdrawing from the conference—the government was not shielded from liability when an ordering agency took action beyond the scope of the contract.

By prohibiting the contractor's use of sponsorships, the Corps engaged in conduct that was inconsistent with the task order terms and fundamentally changed the parties' bargain, the board said. Therefore, it was foreseeable that Impact would be harmed by the directives.

The board awarded Impact \$175,184 plus interest.

Board Judges Joseph A. Vergilio and Jonathan D. Zischkau also joined in the decision.

Andrew K. Wible and William F. Savarino of Cohen Mohr LLP, Washington, D.C., represented the appellant. Michael J. Noble, Office of General Counsel, General Services Administration, Atlanta, represented the government.

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*The board's decision is available at: <http://op.bna.com/fcr.nsf/r?Open=dsen-9upqd8>.*