

Performance Issues

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Verify Authority

- *Engage Learning, Inc. v. Dept. of the Interior*, CBCA 1165, 2010 WL 2484235 (June 15, 2010)
 - No implied contract based on representations of individual who said and believed she was the COR
 - Contractor was left holding an unpaid \$80K invoice

It is the contractor's DUTY to determine that a Government official ordering work has authority to do so.

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Verify Authority

- Even Contracting Officers cannot waive statutory requirements
 - *Shawview Cleaners, LLC*, ASBCA No. 56938, 10-2 BCA ¶ 34550 (Sept. 15, 2010)
 - Similar applications have arisen with the Buy American Act, the Contract Disputes Act and TINA
- Absent compliance with exceptions or waiver procedures expressly allowed under the statute

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Do Not Use Ambiguous or General Terms

- Using ambiguous or general terms for difficult risk allocating terms to avoid difficult and time-consuming discussions is a **TRAP**.
- C.R. Pittman Const. Co., Inc. v. United States*, 92 Fed.Cl. 20 (2010)
 - "[I]f, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood ... the Contractor shall make the repairs ... and full compensation for such repairs will be made ..."

Gov't interpretation of "part of the permanent work"	Contractor interpretation of "part of the permanent work"
Subdivisions of the pumping station that had been incorporated at their ultimate location	Any work that would eventually become part of the completed project

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Create and Maintain a Complete Record

- Claims for equitable adjustments create difficult factual burdens for contractors
 - Delhur Industries, Inc. v. United States*, 95 Fed.Cl. 446 (2010)
 - United Constructors, LLC v. United States*, 95 Fed.Cl. 26 (2010)
 - C.E.M.E.S. S.P.A.*, ASBCA No. 56253, 11-1 BCA ¶ 34640 (Dec. 29, 2010)

You must have documentation to support each aspect of your claim.

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