

UPDATE: Raytheon Settles One Dispute

Written by Nick Sanders

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The decision whether to settle or litigate is a hard one, no doubt about it. At one place, we heard a rule “\$2 million/2 years” – meaning that if you weren’t disputing at least \$2 million and/or if you weren’t willing to wait at least two years for a decision, then you should settle. The rule made some sense because litigation is expensive and the wheels of justice turn very slowly. Settlement is usually the preferred option.

Actually, as we’ve noted before, negotiation is the preferred solution and Contracting Officers are directed to negotiate an equitable solution wherever possible.

Even if nobody likes litigation, sometimes litigation is inevitable. But if litigation is a freeway, note that there are many off-ramps. Litigation and negotiation are not mutually exclusive. One way to push to a negotiated settlement is to request a Contracting Officer Final Decision (COFD) that can be appealed. Another way is to receive a COFD and file an appeal. Those actions signal the seriousness of the matter and can often spur negotiations that lead to a mutually acceptable settlement. Remember, then, that litigation does not preclude a negotiated settlement and may actually be the necessary catalyst to achieve one.

That may be the reason why the ASBCA website is littered with so many announcements that contractor appeals have been settled and the cases have been dismissed.

That lesson was brought to mind when we saw the recent ASBCA announcement that Raytheon Space and Airborne Systems (SAS) had reached a settlement with the government in its appeal of the government’s demand for \$512,732 (ASBCA No. 87803) related to Raytheon SAS’ change to cost accounting practice disclosed in Revision 5 to its CASB Disclosure Statement. We wrote about Raytheon SAS’ litigation in a couple of articles (see [link](#)).

As we noted, after Judge O’Connell was done with his rulings on the motions for summary judgment, it seemed to us (as non-lawyers) that Raytheon was liable for not more than \$153,000, plus interest.

At that point, Raytheon and the government obviously negotiated a mutually acceptable settlement, as was [announced](#) on August 14, 2015. The amount of the settlement was not publicly disclosed. We assume, however, that it was in the neighborhood of \$153,000. We do not know how much Raytheon SAS spent on attorneys to reach that negotiated settlement.

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Originally, Raytheon SAS brought six appeals to the ASBCA related to demands for payment stemming from various changes to cost accounting practice. Three of those six were determined to be time-barred and dismissed (meaning Raytheon SAS owed nothing). One of them was a complete victory for Raytheon SAS (meaning that it owed nothing on the government's demand for \$1.2 million). One has now been settled after being significantly whittled down. That leaves just one case remaining to be heard on the merits.

All in all, not a bad outcome for Raytheon SAS.