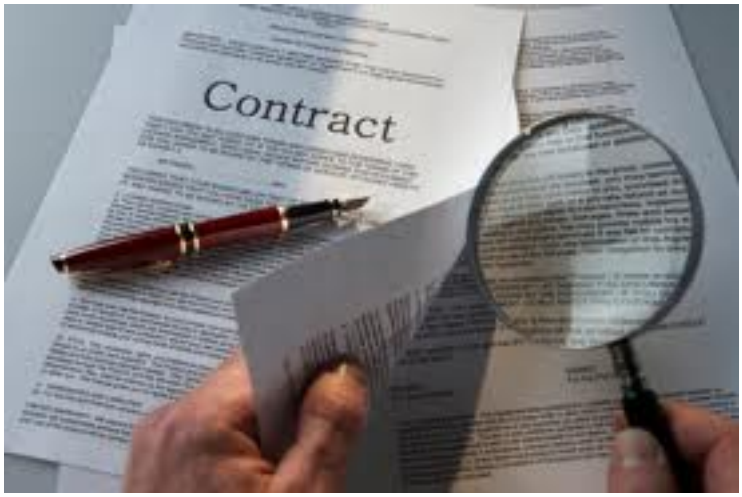

Not too many people would argue with the proposition that before you sign a contract, you ought to read it. And it almost goes without saying that, when reading the contract, you ought to be sure you understand what it says and what it requires of you.

Yet far too often we encounter otherwise competent men and women who sign their government contracts without reading them and/or without understanding them. They simply do not understand what all those "incorporated by reference" contract clauses *actually mean*. They simply do not understand the compliance requirements. They simply do not understand that they may be in breach of their contract, not because they didn't deliver what was promised on time or per spec, but because they didn't submit a required CDRL or because they didn't comply with some other seemingly unimportant clause that was only administrative in nature.

It's easy to dismiss such people as idiots, but that's wrong. They are not idiots; they've just failed to appreciate the technical nuances of government contracting. And they usually get away with it, too. Until one time they don't get away with it and then it costs them. It costs them *a lot.*

Before you dismiss such people, consider this: When is the last time you actually read a software user's agreement *in full*, from start to finish, before you clicked on the button that said you agreed to all terms and conditions? Yeah. See? You're one of them, too.

Anyway, one of the first rules of government contracting is to, you know, actually read your contract. All the way through. In full. From start to finish.

It's also nice if you actually *understand* what you just read. Understand what you signed up for.

Those two things, reading and understanding, can save you big bucks.

If you don't have the time or inclination to read your contract, then that's a sign that you need to hire some additional resources to take care of that little task for you. If you did read the contract but you don't really understand what you read, then that's a sign that you need to hire (at a minimum) a SME consultant to explain to you what you just signed up for. (And a big plus would be getting that SME consultant to give you a compliance roadmap to help you implement necessary systems, processes, and/or controls to make sure you lived up to your end of the contractual agreement.)

The first step is being willing to admit you don't understand what you read. That's actually a big step, and many folks can't take it. The next big step is being willing to admit that you need to change, to implement new systems, processes, and/or controls. But we digress…

All this came to mind when reading the recent ASBCA decision in the matter of **Tri-County Contractors, Inc**

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At stake was a Motion for Summary Judgment, filed by the Government, seeking to have Tri-County's appeal of a Contracting Officer's denial of its claim for $242,830 dismissed, based on the doctrine of "release and final payment."

Tri-County submitted a Request for Equitable Adjustment (REA) that was apparently treated by the parties as a claim under the Contract Disputes Act, even though it lacked the required certification language. Tri-County submitted its REA/claim on February 25, 2011, and amended it in November, 2011. The parties did not negotiate a final REA value. Subsequently, on December 12, 2011, Tri-County's President submitted a "FINAL" contract invoice in the amount of $9,676.85. On December 15, 2011, the Contracting Officer told Tri-County that the final invoice could not be paid until a Final Release was executed. Tri-County executed a Final Release on that same day. The final invoice was paid a month later.

Oops!

Readers, do you see where this is going?

Had the REA been negotiated, the contract value would have been increased. Thus, the final amount due under the contract—and hence the final invoice value—would have been significantly more than the $10K Tri-County sought.

In executing the Final Release, Tri-County waived its right to claim the costs associated with its REA.

The Contracting Officer denied the REA and Tri-County was left in a most untenable position as it tried to appeal that denial to the ASBCA. Even though the Contracting Officer had admitted (in writing) that the REA/claim "had some merit," the fact that Tri-County had executed its Final Release meant that the contract value stood. Note, that Tri-County could have "excepted" specific claims from its Final Release, but it did not do so—probably because the President didn't know enough to do so.

Tri-County's only argument before the Court was "mutual mistake"—meaning that neither party intended that the Final Release would cover the pending REA/claim.

Fortunately for Tri-County, Judge James found that there was sufficient evidence to deny the Government's Motion for Summary Judgment. And so Tri-County survived and will (we suppose) receive a trial on the merits of its claim.

Learn the lesson from Tri-County. Read the document(s) in front of you. Understand what you are reading. Obtain services from SMEs as required. Otherwise, you too may one day sign away your rights to a quarter million dollars.