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There are some who think they "get" the Federal Cost Accounting Standards (CAS) … and then there are those who know its compliance challenges and are more humble. Make no mistake: CAS is hard. It was *designed* to be hard by those who were convinced that large defense contractors were gaming the pre-CAS system. It was written by accountants with input from lawyers and it was written by lawyers with input from accountants.

As a result, it's written in a language all its own.

One of the most challenging Standards is CAS 413. We've written about it fairly extensively on this site because we are fascinated by the evolution of the legal interpretation(s) of its requirements. Plus, it's the Standard that generates the most litigation, because it deals with big dollars.

Unless you have (or had) a defined-benefit pension plan, you probably don't care very much about CAS 413. We get it. Why worry about something hard that's got no impact on you? So feel free to skip this article.

For the rest of you (assuming there is a "*rest of you*"), we want to discuss Judge Firestone's recent decision in the matter of ***Unisys Corporation v. United States***
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If you've read any of our previous articles on CAS 413, you might remember that Judge Firestone is the Judge at the U.S. Court of Federal Claims who gets the CAS 413 cases. She gets them because she "gets" CAS 413. Her decisions on CAS 413 are well-written, reflect tremendous knowledge—and are rarely (if ever) overturned on appeal. As a result, she is the Court's CAS 413 "expert" and gets these tough cases.

Before Judge Firestone was a Motion for Summary Judgment. The facts were undisputed and the only issue to be resolved was "the correct methodology for calculating Unisys's segment closing adjustment under CAS 413."

Unisys sold four divisions to Loral in 1995. As part of the sale, Unisys transferred $43.8 million in pension plan funds to Loral. That transfer did not relieve Unisys of its obligation to calculate a segment closing pension adjustment, nor did it relieve Unisys of its obligation to give the Government its calculated share of any pension plan surplus. As Judge Firestone wrote—

Under the CAS and the precedent of this court and the Federal Circuit, the calculation of a segment closing adjustment payment involves three major steps. First, as noted above, the contractor must determine the difference between the market value of the assets and the actuarial liability in the relevant pension plan as of the date of the segment closing, as provided for in CAS 413.50(c)(12). Second, the contractor must determine the share of the pension surplus assets (or deficit) attributable to the government. … This share is referred to as the 'Teledyne share,' and is discussed in more detail below. … The product of the pension surplus assets calculated under CAS 413 and the Teledyne share is the amount of pension surplus owed by a contractor to the government. This product is referred to as a contractor's segment closing adjustment obligation ('SCAO'). Third, the SCAO may be offset by the 'measurable benefit' that the government received because of an acknowledged surplus of pension assets transferred from the seller of a segment to the buyer of a segment. … This inquiry is governed by the standards of the FAR, and, in particular, the Allowable Cost and Payment Clause, 48 C.F.R. § 52.216-7(h)(2), and the Credits Clause, 48 C.F.R. § 31.201-5.

Although the parties agreed on the steps outlined above by Judge Firestone, they disputed the detailed methodology used by Unisys. The Government calculated a SCAO of $38.64 million, to be reduced by $26.18 million of the funds that Unisys transferred to Loral. Accordingly, the Government demanded a payment of $12.456 million from Unisys.

Unisys calculated a SCAO of $16.567 million, and argued that the Government received $28.844 million in benefit from funds transferred to Loral. Accordingly, Unisys argued that the

Government actually owed it money—though it did not ask for any monies from the Government in the litigation.

The parties disputed several methodological aspects, but the largest dollars involved the treatment of pre-1968 pension contributions and the percentage of fixed-price incentive type contracts that should have been included in the "Teledyne share" calculation. We're not going to get into the discussion of the pre-1968 contributions—except to note that in 2013 a legal decision was required for a 1995 transaction involving funds dating back to before 1968. For many folks who aren't involved with government contract accounting matters, we think this would be mind-blowing. But after 30 years of doing this stuff, we're used to it.

But we do want to discuss the issues involving fixed-price incentive (FPI) contracts, because they're a problem in other areas, such as preparation of the annual proposal to establish final billing rates.

In the *Unisys* case, the Government argued that FPI contracts should be treated just like cost-type contracts for purposes of calculating the Teledyne share. Judge Firestone didn't buy that argument, writing—

… the government's argument that its FPI participation rate must be equivalent to its cost-reimbursement participation rate improperly assumes that FPI contracts are the same as cost-reimbursement contracts for CAS 413 purposes. This assumption is contrary to both experts' opinions, the fixed-price aspects of FPI contracts, and the Teledyne decisions. … the government's assumption that its participation rate should be valued at 100% ignores both parties' experts, who agree that the actual costs reimbursed by the government under an FPI contract is less than that made under cost-reimbursement contracts when the price ceiling is reached.

In its ill-advised revisions to CAS administration, the FAR Councils adopted the DCAA's grouping of contract types into "fixed-price" and "flexibly priced" types. In point of fact those two groupings do not exist in the FAR. FAR Part 16 describes many contract types and never, ever, groups them as does FAR 30.6 or as does the CAS Administration contract clause (52.230-6). As a result of this situation, the CAS cost impact process has been stretched to absurd lengths. For instance, a Time and Materials contract must be treated as *two separate contracts* in the cost impact analysis: one a fixed-price type and the other a flexibly priced type. Moreover, DCAA continues this misguided approach today, where it requires all "flexibly priced" contracts to be included in certain "ICE Model" Schedules (notably Schedule I), even though some of those "flexibly priced" contracts do not include the Allowable Cost and Payment Clause.

Judge Firestone's decision is the first (that we know of) where the government's ill-advised and illogical approach to contract type grouping has been rebuked and rejected. We hope it will not be the last.

Meanwhile, Unisys does not have to pay the Government $12 million (plus interest dating back to 1995).