

Quimba's Long-Delayed Victory

Written by Nick Sanders

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A search tells us that we've mentioned Quimba Software seven times on this blog. We were following Quimba's Quixotic quest for redemption even before the company hired us to assist in one small aspect of its many pieces of litigation before the ASBCA and U.S. Court of Federal Claims. To us, Quimba typifies the story of a small business run by smart people who have to learn the hard way that government contract cost accounting compliance is something that should not be taken lightly.

In 2003 Quimba was awarded a \$200,000 CPFF contract from the U.S. Air Force to perform "information technology research." Quimba performed the work satisfactorily. Then, years after the contract was complete, DCAA performed an "incurred cost" audit of Quimba's claimed 2004 direct and indirect costs, and disallowed claimed deferred compensation costs. But that was not the first issue that Quimba had with its government customer.

Pursuant to the terms of its contract, Quimba submitted invoices for its costs as it incurred them--i.e., as it performed the work. It had a single invoice (in the amount of \$30,322) approved by DCAA and paid by the Air Force. And then everything went to hell.

Apparently, the issue was that Quimba's accounting system "was not DCAA-approved" and its indirect rates were similarly "not DCAA-approved" and "Quimba was told that it 'would not get paid until its indirect rates were approved by DCAA.'" It took almost an entire year for DCAA to approve Quimba's provisional billing rates—even though that was clearly the contracting officer's job. Regardless, Quimba was told that it wouldn't be paid for its work until DCAA had approved its accounting system and its rates. And even after provisional billing rates had been agreed upon, "Quimba did not receive any additional payments for work completed in 2004 prior to the end of FY 2004, and the [DCAA accounting system] audit continued into 2005."

Quimba completed its work in March 2005. It was only after the work was completed that DCAA was willing to approve Quimba's invoices.

The inequity in the foregoing facts should be obvious. Quimba was treated shamefully but, unfortunately, that treatment is not unusual. Small businesses get bullied by government customers, and typically they lack the knowledge, experience, and resources to do anything about it.

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Back to the story. "In May 2007, DCAA initiated an audit of Quimba's FY 2004 ICP and an audit report was issued in July 2007." (DCAA moved a lot faster then than it does today. We suspect the speed of the audit was helped by the fact that Quimba had only one government cost-type contract.) DCAA questioned \$61,124 of Quimba's claimed direct labor (charged to its one cost-type government contract) because "wages paid and deducted as compensation under IRS regulations to the two owners [were] significantly less than direct labor claimed on the government contract."

The contracting officer took that finding and multiplied it, using some form of math unknown to people without Certificates of Appointment. The CO issued a Notice of Intent to disallow \$148,684, because Quimba allegedly claimed costs made unallowable by the FAR compensation cost principle (31.205-6(b)(2)(i)) – "for closely held corporations, compensation costs . . . shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue code and regulations under it." In the Contracting Officer Final Decision (COFD), the claim was for \$91,993. During arguments before the Court, the government admitted that figure was incorrect. The contracting officer knew it was incorrect but refused to revise or rescind the COFD.

And even though the government admitted the math was wrong, it still filed a counter-claim, demanding an additional \$76,482—a figure that was later changed to \$50,096.

Remember the original contract award was for \$200,000. Basically, the government was demanding nearly three-quarters of the entire contract value, all related to Quimba's claim of deferred compensation. And the Court was deciding the dispute a nearly 15 years after the costs had been incurred and claimed and billed and paid.

Quimba, readers may recall, was a small business. How many small businesses have the resources to maintain a fight with the U.S. Government for that length of time? Answer: Not many. Not very many at all.

Finally, nearly 15 years later, Quimba learned that, indeed, its deferred compensation costs were allowable, because they were deductible under IRS guidelines. The compensation costs were deductible because Quimba had no choice but to defer compensation costs. It had no choice but to defer compensation costs because its government customer refused to pay its

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bills. Quimba had no cash flow and was required to perform its contract work anyway, so it had to defer its compensation costs until the government got around to paying the bills.

According to the Court of Federal Claims, in a [decision](#) written by Senior Judge Loren Smith—

It is clear to this Court that, had the parties examined the C.F.R. more closely, the rebuttable presumption contained in 26 C.F.R. § 1.404(b)-1T would have resolved this case long ago. Quimba's deferral of its FY 2004 compensation was unintended, unavoidable, and unanticipated. Furthermore, Quimba's financial difficulty, which forced payment of the compensation beyond 2004, was unforeseeable throughout FY 2004. ... While Quimba understood the company would be required to update its accounting system, there was no reason to believe that the updating and approval process would take the entirety of FY 2004 and continue through a significant part of FY 2005. This is not a case in which the company had a prior course of dealing with the government or an understanding of the elusive accounting system requirements. ... As the government forced Quimba's hand, it would be inequitable to find these deferred compensation costs unallowable nearly thirteen years after the fiscal year in question. The facts in this case make it clear that Quimba's situation falls within this limited exception, and, *had the government engaged in a more careful review of its own regulations, the parties could have avoided five years of unnecessary litigation.*

(Emphasis added.)

Thus, Quimba emerged victorious. The government may still appeal the decision, but we suspect the government attorneys will read between the lines, and consider the matter resolved.

As for Quimba Software ... it closed its doors long ago. The litigation was funded by the company owner(s), as a matter of principle and in an attempt to obtain some small measure of justice.