WHAT IS A DEADLINE AND WHY DO GOVERNMENT CONTRACTORS CARE?

By Richard D. Lieberman, Consultant and Retired Attorney

During the Civil War, at the famous Andersonville Prison, on the inside of the stockade and twenty feet from it, there was a deadline established, over which no prisoner was allowed to go, day or night, under penalty of being shot. By the 1900s, the word "deadline" was being used to describe any line that shouldn't be crossed, not just where the offender would be shot. In the 1920s, deadline was being used as a synonym for "time limit" and was primarily associated with newspaper jargon. In the newspaper business, to have the latest news and still get a newspaper printed and distributed on time required (and still requires) strict time limits for those who write it. (See www.todayifoundout.com).

Why is this important for government contractors? Because there are numerous deadlines in and related to government contractors, and woe will be the government contractor who misses them. Although the penalty is not being shot, it might as well be, for missing deadlines will make the contractor feel like he's been shot and run over by an Abrams tank! Agencies and courts demand strict compliance with deadlines.

Recently, *in Guardian Angels Medical Service Dogs, Inc. v. United States*, No. 14-20C (Fed. Cl. Aug. 29, 2014), the Veterans Affairs Dept defaulted the contract on August 31, 2012. On December 31, 2012 and February 28, 2013, Guardian Angels sent to the contracting officer a letter disputing the default termination. The contracting officer wrote back on May 3, 2013 stating he would not reconsider the default decision, but noting the contractor's right to appeal. On January 7, 2014, (16 months after the default decision) the contractor filed an appeal of the default in the Court of Federal Claims. The court noted that a default termination is a *government claim* that is immediately appealable to the Court, and that the contractor must file its challenge within 12 months from receipt of the contracting officer's decision. The two intervening letters sent by the contractor did not alter the requirement that the contractor must appeal the termination decision within 12 months. Noting that the contractor had missed his deadline for filing, the Court dismissed this appeal since it lacked jurisdiction over the case.

Guardian Angels is not the only government contracts case where a contractor missed a deadline, and was "shot dead." Indeed, here is a short (and incomplete) list of deadlines. Every government lawyer is trained to ask "is this protest, appeal or other litigation filed within the deadline." If it isn't they will move for dismissal.

DEADLINES

In Bid Protests:	(1) Any protest of the terms of a solicitation must be submitted *before* the closing date for an RFP, and before the opening date for an IFB.
	(2) Other protests must be filed at the Government Accountability Offfice ("GAO") not later than 10 days after the basis of protest is known or should have been known. 4 CFR §21.2(a)(2).

In a Contract: Every contract has a delivery schedule. Each deliverable has a deadline. Unexcused failure to meet the delivery schedule is a cause for a termination for default.

Claims & Appeals: (1) A claim must be filed with the Contracting Officer within 6 years of accrual of the claim. 41 U.S.C. § 7103.

(2) An appeal of a claim denied by a Contracting Officer must be filed at a Board of Contract Appeals within 90 dates from the date of receipt of the contracting officer's decision. 41 USC § 7104(a)

(3) Alternatively, an appeal of a claim denied by a Contracting Officer must be filed at the U.S. Court of Federal Claims within 12 months from the date of receipt of the contracting officer's decision. 41 USC § 7104(b).

These are only a small number of government contracts deadlines, but they are of crucial importance. Contractors are cautioned to comply fully with these dealines.