

## Virginia Court of Appeals Decision Tightens Notice Requirement for Government Contractors

The Virginia Court of Appeals' ruling in this matter serves as a guidepost for government contractors when it comes to preserving their right to proceed under Virginia Code § 33.1-386(A). In sum, the ruling confirms that a contractor's intention to file a claim must be in writing and that such written notice must be timely.

This matter arose from a 2000 contract between the Virginia Department of Transportation ("VDOT") and AMEC Civil, LLC ("AMEC") for the construction of the Route 58 Clarksville Bypass in Mecklenburg County. After completing the project, AMEC made an administrative claim requesting an additional \$24 million in cost overruns. VDOT rejected the claim and AMEC filed suit against VDOT in Mecklenburg County Circuit Court.

The matter was tried. Judge Charles Poston awarded AMEC nearly \$21.2 million, denying only its request for prejudgment interest. VDOT and AMEC appealed to the Court of Appeals.

VDOT argued that AMEC failed to provide timely written notice of its intention to file claims in violation of Virginia Code § 33.1-386(A), which authorizes the assertion of an administrative claim "provided that written notice of contractor's intention to file such claim shall have been given to the Department at the time of the occurrence or beginning of the work upon which the subsequent action is based." The Circuit Court dismissed VDOT's argument on the ground that "actual notice was an acceptable substitute for written notice."

The Court of Appeals disagreed, ruling that only written notice would suffice. It determined that while the written notice provision "does not require the sophistication of a legal pleading," it must "clearly and timely state the contractor's intention to later file an administrative claim." Guided by these principles, the Court of Appeals ruled that Virginia Code § 33.1-386(A) barred many of AMEC's claims and directed the Circuit Court to recalculate its award.

The June 16, 2009 ruling also addressed the compensability of certain other damage claims made by AMEC, including, but not limited to, damages awarded

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to AMEC related to elevated lake water levels, overhead power lines, and conditions during winter periods, as well as the Circuit Court's award for home office overhead and cost mark-ups.

The Court of Appeals of Virginia cases are *Commonwealth of Virginia and Commonwealth of Virginia, Department of Transportation v. AMEC Civil, LLC*, Record No. 206-08-2, and *AMEC Civil, LLC v. Commonwealth of Virginia and Commonwealth of Virginia, Department of Transportation*, Record No. 1961-08-2 (June 16, 2009).



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