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- Industry Current Events

Current Events

MDC® INDUSTRY EVENTS

ABA-Forum on Construction, 2016 Winter Meeting

Cutting Edge Solutions for Seismic Events
San Francisco, CA
January 21-22

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ABA-Forum on Construction, 2015 Fall Meeting

Construction ADR Summit
Austin, TX
October 8-9, 2015

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Court Has No Jurisdiction Over a Contractor Claim that Was Based on an Issue Raised to the Contracting Officer for Final Determination but Not Sufficiently Detailed and Explained; Notice Provisions Enforced Against Contractor, and Liquidated Damages Held to be Enforceable

Written by Gail S. Kelley, P.E., J.D.

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Where a contractor amended its complaint in an action against the United States to include a claim for remission of liquidated damages on the basis that it was entitled to a time extension, but the contractor did not explain why it was entitled to a time extension in its original letter to the contracting officer, the court had no jurisdiction over the claim. The contractor's original letter did not contain sufficient details to establish a claim for an extension of time; the contractor could not cure this defect by sending a second letter to the contracting officer after litigation had begun. *K-Con Bldg. Systems, Inc. v. U.S.*, 778 F.3d 1000 (2015).

BACKGROUND

This dispute arose from a contract with the Coast Guard to construct a support team building in Port Huron, Michigan. The contract, which was for \$582,64, included liquidated damages of \$589 for each day of delay in completion. The Coast Guard accepted the building as substantially complete on May 23, 2005, but withheld \$109,554 as liquidated damages for 186 days of delay. The contractor, K-Con, subsequently sent a letter to the contracting officer requesting remission of the liquidated damages, asserting that the "liquidated damages constituted an impermissible penalty" and the Coast Guard "failed to issue extensions to the completion date as a result of changes to the contract." However, K-Con provided no details regarding its request for time extensions.

When the contracting officer denied K-Con's request for remission, K-Con sued in the Court of Federal Claims under the Contract Disputes Act



PA Society of PE (PSPE) 2015 Conference

Pittsburgh, PA

September 23-26

[Mitch Swann](#) presents on Forensic Project Management and Systems Thinking

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2015 ASHRAE Annual Conference

Atlanta, GA

June 7, 8 and 9, 2015

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(CDA). K-Con sought remission of the \$109,554 in liquidated damages plus interest; it also requested additional compensation based on work performed in response to government requests that it alleged amounted to contract changes.

After litigation had begun, K-Con submitted a second letter to the contracting officer. This second letter detailed the contract changes allegedly made by the Coast Guard and asked for a new remedy—\$196,126.38 for additional work necessitated by the changes—and an extension of the completion date of the contract. When the contracting officer denied K-Con's requests, K-Con amended its complaint in the Court of Federal Claims to add these allegations and to seek, in addition to the liquidated-damages relief, a judgment of \$196,126.38 and a 186-day extension.

[Read More](#)

The Construction ADR Summit
ABA Construction Forum, Austin, TX
October 8-9, 2015

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MDCSystems® joined distinguished colleagues at the American Bar Association (ABA) Forum on the Construction Industry's Fall Meeting in Austin, TX. MDC's exhibit was a central location to discuss alternate dispute resolution (ADR), pick up company information or just to say hello. Other visitors left their business card at our booth for a chance to win the MDC cooler filled with goodies.



Everything from an examination of the new appellate rules of arbitration issued by AAA, drafting arbitration clauses that work, the business of being an ADR neutral and other topics were presented by leading lawyers and neutrals from around the country.

Look forward to seeing you at the [ABA Construction Forum's 2016 Midwinter Meeting](#) in San Francisco, January 21-22.

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