

There's a Rule for That

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In June 2013, Plaintiff, Anham Fzco, d/b/a/ ANHAM LLC (Dubai), filed a breach of contract lawsuit in the U.S. Court of Federal Claims, alleging that the United States had breached a term of a settlement agreement. The agreement was reached following Anham's bid protest challenging its exclusion from a procurement for services in Afghanistan. Under the agreement, the Government was to notify Anham within 60 days whether it would award a contract to Anham. The Government failed to do so.

After suit was filed, the parties engaged in discovery for two years, after which Anham moved for partial summary judgment on liability. The Government moved for a 150-day (5-month) enlargement of time in which to file its response. As grounds, the Government argued that it needed additional discovery, suggesting that it might raise defenses of waiver, prior material breach, and forfeiture. Anham opposed the motion for enlargement, pointing out that the Government had failed to point to a single material fact related to liability for which additional discovery was needed.

In reviewing the motion, the Court first pointed out that the Government had filed under the wrong rule. The Government had filed under Rule 6, the rule governing general enlargements of time. The Court, however, stated that "a Rule 56(d) motion is the appropriate vehicle to request the Court to defer consideration of a motion for summary judgment pending further discovery, not a generalized Rule 6 motion for enlargement of time." The difference between the rules is significant.

Under Rule 6(b), a party must merely establish "good cause" to secure an extension of time—"a modest showing that might be met by any legitimate reason for delay." Under Rule 56(d) the moving party must meet a more onerous standard with particularized requirements.

The Court further noted that the case was "progressing at a sluggish pace," and that Anham's 16-page motion for partial summary judgment presented only a pure issue of law for review. Therefore, the Court concluded that the Government had not met the standard for Rule 56(d) relief, and denied the motion to enlarge.

Read Judge Coster Williams decision [here](#).