

Recent Projects

Termination for the Convenience of the Government

- ***\$1.5 million Partial Termination Proposal***
 - » A USACE Firm Fixed Price Contract in the Middle East was partially terminated for the convenience of the Government. Excell was hired to evaluate the costs recoverable under the partial termination, which removed approximately 40% of the project nearly 1 year into construction. Excell was able to allocate the costs expended by the Prime due to early-on delays, differing site conditions, change orders, and owner changes. Excell was instrumental in the development of a system that allowed the Prime Contractor, a Joint Venture with one partner based in the United States and the other based in Turkey, to collect, identify, and categorize the costs submitted by each of the companies, as well as ensure that there were not any duplicative costs submitted. Excell then assisted in the preparation of an REA for the increased costs associated with the completion of the construction project.

- ***\$1.2 million Termination Proposal***
 - » A USACE Firm Fixed Price Contract in the Middle East was completely terminated for the convenience of the Government. Excell was hired to evaluate and prepare a proposal that would recover the contractor's costs as allowable under the FAR provisions. Excell was also tasked with when and where to apply a unique Afghanistan Tax that would affect the total cost on the prime contractor.

- ***\$2.5 million Termination Proposal***
 - » A Veteran Owned, Service Disabled, Small Business was awarded a Firm Fixed Price contract by USACE for a natural disaster clean up. The Contract was terminated by the Government due to FEMA time restrictions. Excell was retained by both the Prime Contractor as well as the Subcontractors to assist with the review, recovery, and preparation of the costs allowable in the proposal to be submitted to the Government. Excell was able to show the Prime Contractor a significant amount of recoverable costs, which had overlooked when estimating their termination proposal costs.

Bond and/or Insurance Claims

- ***\$7.5 million claim request submitted to Zurich***
 - » A Subcontractor was defaulted for cause on a construction project in Las Vegas, NV. Excell conducted a policy review then prepared the Subguard Claim for the client seeking recovery of \$7.5 in losses and additional expenses as a result of the Subcontractor Default. Excell supported the Contractor during the life of the submission, to include 8 requests for additional information and clarification from the adjuster. Contractor was successful in receiving compensation from Zurich.

Bid & Proposal Review

- ***\$1 billion plus proposal submitted to U.S. Army Rock Island Contracting Center***

» Excell performed an extensive review and analysis of the proposal being submitted for the Kuwait Base Operations and Security Support Services Contract. Client received award of the contract by the U.S. Army Rock Island Contracting Center to provide comprehensive support services for all U.S. Army facilities in Kuwait. The award is worth an estimated \$1.4 billion with all options exercised.

DCAA Audits

- ***Termination for Convenience Proposal(s) Audited by DCAA***

» Excell worked as the point of contact for the DCAA auditor during their audit of our client's USACE project Termination for Convenience Proposal. Excell worked closely with DCAA representative as well as the client to recover, organize, and present all additional data being requested by the DCAA auditors. Contractor was a Joint Venture with one party residing in the United States and the other Joint Venture party residing in Istanbul, Turkey. Project was performed in Afghanistan. Excell was responsible for the recovery and translation of all relevant documents. Excell often times had to supplement submittals to DCAA with an explanation and supporting documentation on the unique aspects associated with and required by foreign-based contractors, in addition to the foreign-based job site.

» Excell was hired to perform these services once again when the Contractor had a second Task Order Partially Terminated for the Convenience of the Government.

Expert Opinions

- ***Arbitration/Mediation Expert Witness***

» Excell was hired to serve as an Expert Witness during a \$2.5 million Arbitration/Mediation hearing for the USOC Headquarters. Excell was instrumental in supporting the Contractors claims of Delay and Disruption. Client was successful in receiving compensation.

- ***Litigation Expert Witness***

» Excell was brought in as an Expert to evaluate the Prime Subcontractor interface on a \$40 million Government National Guard Readiness facility being built under direction of USACE. A significant cost over-run occurred due to Maladministration. Client was successful and satisfactorily compensated. Excell's involvement caused the one-year litigation matter to settle in less than 6 weeks to the satisfaction of the client.

» Excell is currently acting in a capacity as an Expert to assist a Prime Contractor in cost recovery on a potential defective design and a faulty installation issue. The matter is ongoing and the studies conducted to date are preliminary in nature. The project is estimated to be valued at \$37 million.

Bid Protest

- Over the course of the last two years Excell has handled various Bid Protests with an approximate 75% success rate.
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Request for Equitable Adjustment (REA)

Excell's graphics-oriented methodology has proven effective in the preparation and settlement of REA-related disputes. Services include identification and evaluation of the viability of entitlement issues and their presentation and negotiation of same. While all REAs include a multitude of issues encountered during the life of the project, there are many issues that seem to reoccur when dealing with construction contracts. Some of the most common issues Excell handles when preparing REAs for our clients include:

Defective Specifications

- Overly Generic Specifications;
- Government's implied warranty of constructability
- Impractical/Impossible specifications;
- Multiple Specification Interpretations; or
- Nondisclosure
- Prescriptive v. Performance Specifications

Defective Contract Documents

- Ambiguity or inconsistency
- Order of Precedence errors
- Unreasonable interpretation of applicable standards.
- Unresponsive to RFIs
- Failure to incorporate correct UFCs

Incomplete/Incorrect Design Drawings

- Lack of Design Discipline Coordination
- Improper control asserted on Design Build Contracts
- Failure to issue RFP and review COP in a timely manner
- Inadequate, or Incorrect As-Builts issued with RFP
- Refusal to enforce A&E deadlines, or limit A&E changes made

Differing Site Conditions

- Category I
 - Nondisclosure of site conditions
 - Refusal to allow contractor to do non-destructive testing
- Category II
 - Interference with site inspection/investigation data
- Hazardous Materials
 - Failure to conduct or provide hazardous materials testing

Delay, Disruption, Ripple Effect

- NTP Delays
- Constructive Suspension of Work
- Stop Work Orders
- Interference with Contractor's work
- Delays in Inspections
- Delays in approving Drawings, Proposals, Submittals, etc.
- Weather Delays
- Site Access Issues
- Critical Path Delay

- Time Impact Analysis
- Concurrent Delays

Maladministration

- Refusal to participate in contractually required partnering
- Overzealous inspections
- Multiple people issuing directives to the contractor with no clear authority
- Violations of Good Faith and Fair Dealing covenants
- Anti-Deficiency Act violations

Purchase Order / Pricing Disputes

- Unilateral deductive Modifications issued without justification on the cost reduction.
- Pricing expired when approval is granted, owner refusal to pay the current price.
- Unabsorbed Overhead
- Extended General Conditions

Liquidated Damages

- Concurrent delays
- Beneficial Occupancy Date
- Punitive or retaliatory in nature


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Excell has been saving projects, companies and careers since 1983. From its beginning, Excell rapidly evolved into a leader in the Contract Disputes / Claim Avoidance arena with few equals.

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Get in Touch

 [1920 Vindicator Drive, Suite 113 Colorado Springs, CO 80919](#)

 **719-599-8336 (office)**
719-598-0588 (fax)

 <mailto:info@excellconsulting.net>

Meet John Balch, CEO & Founder



John G. Balch, a Certified Professional Contract Manager, has over 40 years of business operational experience.

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