

J. TAYLOR BENSON

– Representative Matters –

REPRESENTATIVE MATTERS

Litigation

- Successfully defended wrongful Termination for Default in U.S. Court of Federal Claims regarding project on international military base, resulting in conversion to termination for convenience, upgraded CPARS performance rating, and recovery of costs via mediation. Claim was based on government breach of contract. Successfully argued that CPARS contractor comments constituted valid request for Contracting Officer's final decision under CDA. See *FCI v. United States*, 128 Fed.Cl. 788, 797 (2016); discussed in *Vanquish Worldwide, LLC v. United States*, 134 Fed.Cl. 72, 78 (2017).
- Successful negotiation leading to \$1.3 million recovery of costs for architect client on Department of Labor contract. After REA was filed and the Contracting Officer refused to engage in negotiations, maneuvered to engage agency counsel in the dispute and negotiated a withdrawal of Contracting Officer final decision; settlement was reached in 30 days. See *Coover-Clark & Assoc. v. Department of Labor*, CBCA 5898 (Dec. 2017).
- Negotiated favorable resolutions to commercial contractor disputes on issues including mechanic's liens, contract interpretation, delays, and prime-subcontractor disputes.

Administrative Remedies

Terminations for Convenience

- Assisted in preparation and negotiation of multiple T4C settlement proposals on construction contracts located at overseas air bases, which included navigating a DCAA audit, successful resolution of a pending request for equitable adjustment. Negotiated favorable settlements, including costs under Modified Total Cost method, consultants' fees, interest, and attorney's fees where applicable.

Terminations for Default

- Strategically established facts that would eventually prove that USACE wrongfully terminated contract for default before construction was scheduled to begin. Exhausted the administrative process with USACE contracting officer, including timely responses to cure notice and show cause notices which successfully asserted contractual contradictions to the contracting officer's asserted basis for termination.

Value Engineering Change Proposals (VECP)

- Advised client in strategizing and preparing a \$3 million VECP proposal on GSA federal building contract; Proposal accepted, and Government requested additional VECPs based on same format.

Requests for Equitable Adjustment (REA)

Advises clients through case evaluation, strategy, and preparation of comprehensive certified REA packages; conducts negotiations with contracting officers, including converting REAs into claims under the Contract Disputes Act.

- Prepared REAs on two related construction contracts for international client on USAID contract involving defective plans and specifications, delays, differing site conditions, breach of contract, improper threat of Liquidated Damages, and fraud, waste and abuse issues Assisted in convincing Office of Inspector General to open official investigation into fraud and conflicts of interest involving the agency and its contracted architect. Claims were certified, currently awaiting Contracting Officer final decision.
- Prepared \$1.5 million REA for subcontractor on USACE construction contract at a military base and negotiated with prime to allow pass-through claim. Negotiations broke down, and assisted client in preparing a Miller-Act claim against the prime.
- Prepared pricing submission for client on GSA build-out and lease agreement; successfully positioned client's cost and pricing data that led to satisfactory negotiation and agreement on Tenant Improvement portion of the lease.

Contract Disputes

- Successfully resolved non-payment and stop-work issues on \$21 million Colorado Department of Transportation highway contract stemming from defective plans and specifications and government maladministration. Through negotiation and use of dispute review boards, persuaded government to release full progress payments, withdraw its stop-work order, agree to a revised schedule, and allow for contractor's recovery of resultant damages.