

CLIENT ALERT

ASBCA Holds That Contractor Entitled to Recover Costs of Preparing to Perform, When CO Terminated Contract Before Notice to Proceed

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In Appeal of Pro-Built Construction Firm (ASBCA No. 59278), the Board found that the contractor was entitled to recover nearly \$290,000, even though Pro-Built never actually performed the contract. The U.S. Army Corps of Engineers contracted with Pro-Built to construct a police station in Afghanistan, but eight months later, terminated the contract for convenience, before the USACE ever issued a notice to proceed with construction to Pro-Built. After the USACE determined Pro-Built was entitled to \$48,972 in reimbursable costs, Pro-Built appealed to the Board, arguing it was also entitled to direct labor and subcontractor costs as well as lost profit. In rejecting the USACE's argument that it was unreasonable to incur "standby" costs prior to the NTP, the Board found that Pro-Built was entitled to three months of these costs and lost profit, holding that it was reasonable for Pro-Built to have staff on standby for three – not eight – months, and Pro-Built properly determined it was in its best interest to retain personnel and subcontractors in advance of construction due to the labor market and security situation in Afghanistan. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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