

CLIENT ALERT

CBCA Holds that Contractor is Out on a Limb Seeking Claim Preparation Costs, but Grants T4C Partial Victory

February 11, 2019

In *Woolery Timber Management, Inc. v. Department of Agriculture* (CBCA No. 6031), the contractor sought damages for the alleged partial termination of its contract and various other costs, including consulting fees related to the contractor's preparation of its certified claim and extra time expended as a result of blocked access to a road. With respect to the alleged partial termination, the Board found that it was not, in fact, a termination at all because the parties failed to execute a draft bilateral modification that would have eliminated some work scope, and the contracting officer never unilaterally issued the modification. However, the Board noted that, earlier, the CO *had* partially terminated for convenience, but that the contractor failed to submit a termination settlement proposal within one year of that earlier termination. That failure was not fatal. The Board explained that because the earlier termination occurred under the commercial items termination for convenience clause (FAR 52.212-4), and not the FAR's standard termination for convenience clause, there was no one-year time limit and, thus, Woolery still could "pursue a remedy for any increased costs resulting from the...convenience termination." Regarding Woolery's cost claims, the Board reiterated that, consistent with *Bill Strong*, Woolery could not recover its claim preparation costs. Lastly, the Board awarded Woolery half of its idle equipment damages resulting from a service road that was accidentally blocked — despite the fact that the solicitation did not warrant that Woolery could use the road (generally, this language is required to make an excusable delay compensable).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Stephen J. McBrady

Partner – Washington, D.C.
Phone: +1.202.624.2547
Email: smcbrady@crowell.com

Nicole Owren-Wiest

Partner – Washington, D.C.
Phone: +1.202.624.2863
Email: nowrenwiest@crowell.com

Skye Mathieson

Counsel – Washington, D.C.
Phone: +1.202.624.2606
Email: smathieson@crowell.com