

CLIENT ALERT

Contractor Recovers Increased Costs from a Collective Bargaining Agreement Executed After an Option Period is Exercised

March 4, 2020

In *Alutiiq Commercial Enterprise, LLC* (Jan. 9, 2020), the Armed Services Board of Contract Appeals held that a contractor is entitled to an equitable adjustment under the Service Contract Act Price Adjustment Clause, FAR 52.222-43, for increased labor costs associated with a new Collective Bargaining Agreement executed after an option period is exercised when the contracting officer failed to provide the 30-day notice required by FAR 22.1010(b), which requires the contracting officer to notify the contractor and the collective bargaining agent in writing of the forthcoming option exercise and the applicable acquisition dates. The Board reached this conclusion despite the fact that the parties exercised the option via a bilateral modification. The Board was unwilling to find that the bilateral modification waived FAR 22.1010(b)'s notice requirement when a clear and unequivocal intention to do so was not present. The dissent stated that the option referred to in "FAR 22.1010, FAR 52.222-43, and FAR 52.217-9 means an option exercised unilaterally" and thus the notice requirement in FAR 22.1010(b) did not apply to the parties' bilateral modification.

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

Nicole Owren-Wiest

Partner – Washington, D.C.

Phone: +1.202.624.2863

Email: nowrenwiest@crowell.com

Trina Fairley Barlow

Partner – Washington, D.C.

Phone: +1.202.624.2830

Email: tbarlow@crowell.com

Michelle D. Coleman

Counsel – Washington, D.C.

Phone: +1.202.654.6708

Email: mcoleman@crowell.com