

CLIENT ALERT

Contractor's Unwaivable CDA Right to Board Review

December 5, 2017

In *Ikhana, LLC* (ASBCA Nos. 60462 et al., Oct. 18, 2017), the Board held that a contractor's right to CDA appeal cannot be indirectly waived by an assignment of the underlying claims to a surety. Following a termination for default, Ikhana appealed several previously submitted claims (deemed denied). The surety and the Government, believing that Ikhana had assigned those claims to the surety, brokered a settlement agreement to withdraw those appeals and finish performance. The Board held that, regardless of whether Ikhana had assigned its claims, an assignment cannot indirectly "waive" a contractor's statutory right to Board review under the CDA. The Board distinguished its earlier decision in *Safeco Ins. Co. of Am.* (ASBCA No. 52107), which upheld a surety's right to appeal assigned claims while the government attempted to nullify the contractor's assignment because—critically—the contractor in Safeco was uninterested in pursuing that appeal. 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

Charles Baek

Counsel – Washington, D.C.
Phone: +1.202.624.2894
Email: cbaek@crowell.com

Skye Mathieson

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

Payal Nanavati

Associate – Washington, D.C.
Phone: +1.202.624.2580
Email: pnanavati@crowell.com