

## CLIENT ALERT

### Deal or No Deal? Board Reminds Contractors that Money “Awarded” in Final Decision May Evaporate If Appealed

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In *BES Design/Build, LLC v. Dep’t of Veterans Affairs* (CBCA 5640), the Board denied BES’ motion “for the immediate release of funds ‘awarded’” in the CO’s final decision, finding that, once appealed, “[a] final decision...is not binding on the agency, because...that decision is reviewed de novo by the Board.” Specifically, following BES’ performance of additional work, BES claimed \$168,847.06 and additional time. The CO found that BES was entitled to 16 additional days and \$21,998.34. The CO drafted a modification consistent with such decision and interest due. BES, however, made additional “‘pen and ink’ changes to the modification,” which the CO declined to incorporate. Ultimately, BES refused to sign the modification and, instead, appealed the CO’s decision. Three months later, BES filed the motion for immediate release of the “awarded” funds, but neither the agency nor the Board is bound by the CO’s findings and offer of payment once appealed; the Board may award less, or more, than the offered amount. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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