

## CLIENT ALERT

### If It's Not One Thing, It's Another: Claiming Alternative Sums Not Fatal Under CDA

December 24, 2020

In *Constellation NewEnergy, Inc.*, ASBCA No. 62518 (December 8, 2020), the Armed Services Board of Contract Appeals addressed whether a claim satisfied the Contract Disputes Act's "sum certain" requirement when it listed two alternative amounts of recovery. The contractor initially submitted a "Change Order Request" in which it sought (1) a certain amount for completed work, and (2) also stated that additional work could be completed for a greater amount. A Navy contract specialist responded, in part, that the Government did not want to pursue or order the proposed additional work. The contractor later converted the submission into a claim for the performed work, without amending the proposed amounts. The contracting officer issued a final decision in which she noted that she was only addressing the amount sought for the performed work. On appeal, the Board requested that the parties address whether the "sum certain" requirement was met. The Navy moved to dismiss for lack of jurisdiction. The Board ultimately held that the requirement was met because the contracting officer understood what amount had actually been claimed. Specifically, when issuing the decision, the contracting officer recognized that the second, additional amount was not part of the dispute because the Government had declined to order the proposed work. This decision affirms the Board's precedents maintaining jurisdiction over claims that present an alternative sum certain, where the amount sought is understood and/or can be calculated.

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

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