

CLIENT ALERT

Noncompliance with Planning "Directive" Renders Subcontract Costs Unreasonable

May 2, 2018

In the long-running case of *Kellogg Brown & Root Services, Inc.* (ASBCA No. 58175), the Board disallowed as unreasonable certain subcontract headcount-based dining facility costs under FAR Part 31 and the Allowable Cost and Payment clause (FAR 52.216-7(a)). The Board found KBR's costs unreasonable because they "exceeded the amounts that should have been billed" if KBR had adjusted the subcontractor's pricing to reflect a government-issued Letter of Technical Direction (LOTD). The LOTD told KBR to expect a lower headcount at a dining facility. KBR argued that the LOTD was issued by a government official who lacked authority to do so, and was a "planning document[], not [a] binding contract modification[]," that did not require KBR to reprice the subcontract to reflect the new anticipated headcount. The Board disagreed, finding that KBR's disregard of a valid directive – and its failure to adjust prices to reflect the lower anticipated headcount – rendered its excess subcontract costs unreasonable (and therefore unallowable). The Board also found probative KBR's contemporaneous treatment of the LOTD as binding and KBR's initial issuance of a credit to the government to repay the excess dining facility costs.

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

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