

## CLIENT ALERT

### Snooze You Lose: ASBCA Denies Appeal Seeking Payment for Employee Paid "To Do Nothing" During Stop Work

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In *Advanced Global Resources, LLC, ASBCA No. 62070* (September 10, 2019), the Armed Services Board of Contract Appeals addressed whether a contractor may recover unmitigated direct labor costs incurred during a stop-work period. The costs at issue related to an employee hired to work on Advanced Global Resources, LLC's (AGR) Army technology support services contract. The Army issued a stop-work order one week after award due to a protest. While the stop-work order did not direct AGR to be "on stand-by," AGR paid the employee despite the fact that the employee did not perform any work on the contract. AGR submitted a request for equitable adjustment for the employee's direct labor costs and unabsorbed overhead. The contracting officer denied AGR's Eichleay damages, and conditionally granted payment of the direct labor costs, if AGR did not appeal. AGR did appeal, and the Board denied the direct labor claim stating that AGR paid the new employee "to do nothing" and failed to minimize its costs. The Board denied AGR's unabsorbed overhead claim because it did not satisfy the second prong of the Eichleay formula. This decision serves as a reminder to mitigate costs (when possible) during a stop-work period in order to minimize the risk of nonpayment.

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

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