

## CLIENT ALERT

### "A Claim By Any Other Name": Jurisdiction Over Certified Supplement to Termination Proposal

Feb.23.2021

In Globe Trailer Manufacturing, Inc., ASBCA No. 62594 (Jan. 28, 2021), the Armed Services Board of Contract Appeals (the Board) addressed whether a contractor's certified supplement to a termination settlement proposal (TSP) constitutes a claim under the Contract Disputes Act. After termination, the contractor submitted a TSP that included costs of constructive changes. During the ensuing TSP negotiations, the contractor provided government counsel with a supplement to the TSP that included supporting documentation, calculations, and a CDA certificate pertaining to the constructive change allegation. The contractor subsequently appealed, as a deemed denial, the TSP and supplement to the Board. The government moved to dismiss, alleging that (1) the TSP had not yet ripened into a valid claim, and (2) the supplement to the TSP was not a valid claim because (a) it was provided to government counsel instead of the contracting officer, and (b) did not make a demand in a single document.

The Board dismissed the TSP as unripe, since there was insufficient evidence that the parties had reached impasse in TSP negotiations, but it held that the TSP supplement was a valid claim that was properly appealed as a deemed denial. The Board held that the contractor's supplemental email and attachments met the jurisdictional requirements of a valid claim, and it reaffirmed the rule that submitting a claim to government counsel, instead of the contracting officer, does not invalidate the claim.

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

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