

Construction

Wiley represents construction contractors, subcontractors, owners, developers, design professionals, and insurers in construction disputes, including before the Boards of Contract Appeals, in federal court, and in arbitrations (both domestic and international). This includes assisting contractors and design professionals in evaluating and preparing requests for equitable adjustments and claims, and helping owners evaluate and respond to such requests and claims.

Wiley has extensive experience representing government contractors in all aspects of design and construction contracts, including assisting companies in the industry with navigating the extensive compliance requirements applicable to government contractors. In addition to pre- and post-award protest counseling and litigation, we advise clients on labor compliance matters including Davis-Bacon Act issues and are adept in navigating government investigations, including false claims allegations of waste, fraud, and abuse. Our experience includes nuclear waste projects involving complex legal and contract compliance issues, as well as matters arising from U.S. government-sponsored international projects, including projects in Iraq, Afghanistan, and other countries. Our deep bench of accomplished government contracts attorneys collaborate with numerous other Wiley practices, including Litigation, White Collar Defense & Government Investigations, Employment & Labor, and International Trade.

Drawing on this interdisciplinary expertise, we have successfully represented government contractors in a wide range of construction-related areas, including the evaluation, preparation, and prosecution of requests for equitable adjustments and claims involving issues such as defective specifications, differing site conditions, constructive changes, and delay, including critical path method (CPM) and other scheduling issues; sponsored claims; Davis-Bacon Act counseling and investigations; and leasing disputes.

Representative Experience:

- Counseling and representing a Japanese construction company in submitting millions of dollars in certified claims and requests for equitable adjustment relating to multiple Army Corps of Engineers funded projects for the benefit of the Kuwaiti military.
- Represented a transit authority in its dispute with a developer, a design-build prime contractor, and the architect/engineer of record, filed in the U.S. District Court for the Eastern District of Virginia. The multiparty litigation involved numerous claims and counterclaims, including construction delay claims, constructive changes, liquidated damages, and professional negligence.

- Represented an Afghani construction contractor on terminations for default issued by the U.S. Army Corps of Engineers on two Army base construction projects in Afghanistan. The matter was successfully settled, with termination payments made to our client.
- Represented a large construction contractor in a six-week hearing at the Civilian Board of Contract Appeals (CBCA) regarding issues arising under a significant U.S. embassy project, including differing site conditions, delay, and changed conditions.
- Represented a subguard insurer of a prime construction contractor in the prosecution of over \$25 million in claims at the CBCA arising from defective design and compensable delays on a federal courthouse project. The appeal was successfully settled with substantial payments to the prime contractor and the insurer.
- Successfully defended a \$300 million award to a national construction firm against bid protests alleging an organizational conflict of interest at the U.S. Government Accountability Office (GAO), the U.S. Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit.
- Provided advice to a Fortune 100 architecture and engineering company regarding OCI issues related to procurements with 25-30 state, local, and federal entities arising from purchase of a construction company.
- Assisted an ARRA grant recipient with an internal audit of subcontractor compliance with the Davis-Bacon Act, and provided training as well as corrective action plans for subcontractors where the investigation revealed Davis-Bacon Act compliance issues.
- Successfully challenged the Army Corps of Engineers' decision to follow GAO's recommendation that Turner Construction Co., Inc., be excluded from a competition for construction of a government hospital because of an alleged organizational conflict of interest related to merger discussions involving one of Turner's subcontractors and the company that had developed the specifications. In a landmark decision, the COFC and the Federal Circuit agreed that the agency acted arbitrarily in following GAO's recommendation, and ordered the contract be reinstated to Turner. (*Turner Constr. Co. v. United States*, 94 Fed. Cl. 561 (2010), *aff'd*, 645 F.3d 1377 (Fed. Cir. 2011)).

Contact Us

Craig Smith
202.719.7297 | csmith@wiley.law