

# **Manfredonia Law Offices, LLC**

## **Government Contract Attorneys**

### **Government Contracts Newsletter (Feb 2016)**

Enjoy our monthly newsletter to keep up with current news in federal government contracting. We represent companies in the U.S. and abroad who do business with the federal government. Government Contract lawyers at our firm have a keen understanding of the federal procurement rules and leverage this knowledge to obtain the best results for our clients. Contact us for a free consultation. [Learn More](#)



### **VA Pays Dearly to Settle Aurora Colorado VAMC Debacle**

We previously reported the decision of the Board of Contract Appeals last year declaring that Kiewit-Turner was excused from performance and entitled to stop construction, mid-project, based on the VA's material breach of Contract in the construction of the Aurora VA Medical Center.

*Kiewit-Turner, a joint venture, CBCA 3450, 2015-1 BCA P35,820 (December 9, 2014)*

The Board's decision was based on VA's failure to provide a design that could be constructed within its budget limitations and VA's inability to obtain funding to complete the project. The Board decision referred to VA mismanagement and cited testimony describing project management "as the least effective and most dysfunctional staff on any project that he had ever seen."

Earlier this month the Board of Contract Appeals endorsed a settlement with Kiewit-Turner, resolving claims exceeding 100 million dollars. See. [Board Order Dismissing Appeals](#) Congress subsequently provided additional funding and, in October 2015, the Army Corp of Engineers awarded a \$571 million contract to Kiewit-Turner to complete the project. The projected completion date is January 23, 2018.

### **Contractor's Failure to Keep Accurate Cost Records Leads to Denial of Claims**

In the *Appeals of Vistas Construction of Illinois, Inc.* ASBCA Nos. 58479 (January 12, 2016), the Armed Services Board of Contract Appeals ("Board") denied a contractor's claims for additional work and delays involving a project to enlarge a levee in Jefferson Parish, Louisiana. The Board denied most of the claims for lack of adequate proof. The Board gave little weight to the contractor's attempts to recreate what occurred during contract performance by piecing together information during litigation.

The Board noted that the contractor's method of "segregating costs between changed and unchanged work is a matter of considerable controversy." Unfortunately, the contractor did not maintain records during contract performance, which separated costs for base contract work and change order work. During litigation, the contractor tried to use certified payrolls to prove costs for unchanged vs. changed work. The Board found this unconvincing, stating that the certified payrolls "do not describe what work was being performed, they do not identify the CLINs or the tasks performed by the worker that day, nor do they identify the equipment used." [Read More](#)

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### **GAO Investigation Concludes Army Extended Services Contract Without Proper Authorization Under Applicable Procurement Regulations**

In a recent investigation, the GAO found that the Army had wrongly extended contracts of incumbent contractors beyond what is allowed by the federal law. FAR 52.217-8, "Option to Extend Services," allows a Contracting Officer to extend a service contract for up to six months. This clause provides:

52.217-8, OPTION TO EXTEND SERVICES (NOV 1999) The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within [insert the period of time within which the Contracting Officer may exercise the option].

The above clause is typically required when there is a need for continued services until the Government awards a new contract. These extended contracts are commonly known as "bridge contracts." [Read More Here](#)

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### **Government Uses Wrong NAICS Code Where RFP is For Admin Services, Not Engineering Services**

The SBA Office of Hearing and Appeals ("OHA") held that Government assigned an incorrect NAICS code because the contract was for administrative support services, not engineering services.

The RFP was based on NAICS code 541330, "Engineering Services, under the Military and Aerospace Equipment and Military Weapons (MAE&MW) Exception," with a corresponding size threshold of \$38.5 million in annual receipts. The Tolliver Group, Inc. ("Contractor") complained that this NAICS designation was wrong because the Performance Work Statement ("PWS") did not require the Contractor "to design, develop, or build anything." Instead, the PWS required assistance with performance analysis, business process design and workforce training. The Contractor argued that, because the services were administrative in nature, the NAICS designation should be NAICS code 541611, "Administrative Management and General Management Consulting Services," with a corresponding \$15 million annual receipts size standard. [Read More Here](#)

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*Leveraging Our  
Knowledge to Advance  
Our Client's Interests*

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