

# CONSTRUCTION AND PROCUREMENT LAW NEWS

Recent federal, state, and local developments of interest, prepared by Bradley’s Construction and Procurement Group:

***Assumptions Will Make a Fool out of You and the Reasonableness of your Delay-Related Costs Claim***

In one of its recent opinions, *Kellogg Brown & Root Services, Inc. v. Sec’y of the Army*, the Federal Circuit issued new guidance on what contractors must show to prove the reasonableness of costs incurred following an (alleged) government-caused delay.

The U.S. Army (the “Army”) and Kellogg Brown & Root Services, Inc. (“KBR”) contracted for KBR to deliver thousands of trailers to Iraq by an agreed-upon deadline. In turn, KBR entered into a fixed-price

subcontract with First Kuwaiti Co. of Kuwait (“Kuwaiti”) to transport the trailers. The Army was tasked with providing force protection for the mission – an obligation KBR alleged the Army breached – consequently preventing Kuwaiti from timely delivering the trailers and forcing it to incur costs for rented land to store the trailers, idle truck costs due to the backup of trailers at the border, and double-handling (*i.e.*, unloading and then reloading the trailers).

KBR, as the prime contractor, filed two requests with the Armed Services Board of Contract Appeals (the “Board”) for equitable adjustments with the Army, asserting that it was entitled to recover the payment to Kuwaiti because the delay and double-handling costs were due to the Army’s failure to provide the contractually-required force protection. The Board awarded KBR roughly \$4,000,000 in costs associated with the land lease to store the trailers, but the remaining amount of KBR’s nearly \$51,000,000 adjustment claim associated with delay and double-handling costs was rejected. KBR appealed the Board’s decision on the basis that it was entitled to the full amount requested and that these delay costs were reasonable. In addressing the issue of cost reasonableness, the Federal Circuit assumed – without deciding – that the Army was required to provide force protection to enable KBR to timely perform under the contract.

**Inside:**

Supreme Court to Resolve Circuit Split Over Whether District Courts Can Order Discovery in Aid of Private International Arbitration.....	2
Let’s Break Up: The Minnesota Supreme Court’s Decision that Each Building in a Multi-Building Complex is a Separate Improvement.....	3
Wyoming Supreme Court Allows Insured to Seek Bad Faith Damages.....	4
Texas Update: HB 1578 – Attorney’s Fees.....	4
Afghanistan Withdrawal: The Government Contractor’s Guide to Terminations for Convenience .....	5
Lawyer Activities.....	10

[www.bradley.com](http://www.bradley.com)

<b>Birmingham Office</b> One Federal Place 1819 5 <sup>th</sup> Avenue North Birmingham, AL 35203 (205) 521-8000	<b>Nashville Office</b> Roundabout Plaza 1600 Division Street Suite 700 Nashville, TN 37203 (615) 244-2582	<b>Washington, D.C. Office</b> 1615 L Street N.W. Suite 1350 Washington, D.C. 20036 (202) 393-7150	<b>Charlotte Office</b> Hearst Tower 214 North Tryon Street Suite 3700 Charlotte, NC 28202 (704) 338-6000	<b>Houston Office</b> JPMorgan Chase Tower 600 Travis Street Suite 4800 Houston, TX 77002 (713) 576-0300
<b>Jackson Office</b> One Jackson Place 188 East Capitol Street Suite 400 Jackson, MS 39201 (601) 948-8000	<b>Huntsville Office</b> 200 Clinton Ave. West Suite 900 Huntsville, AL 35801 (256) 517-5100	<b>Montgomery Office</b> RSA Dexter Avenue Building 445 Dexter Avenue Suite 9075 Montgomery, AL 36104 (334) 956-7700	<b>Tampa Office</b> 100 South Ashley Drive Suite 1300 Tampa, FL 33602 (813) 229-3333	<b>Dallas Office</b> 4400 Renaissance Tower 1201 Elm Street Dallas, TX 75270 (214) 939-8700

In deciding the issue, the Federal Circuit looked to KBR's justification (or methodology) for its claimed costs to determine whether the costs were reasonable. The Federal Circuit ultimately concluded that KBR failed to prove reasonableness of the costs for the following five (5) reasons:

**#1:** KBR assumed "perfect performance" on the part of Kuwaiti despite records showing the contrary. For example, Kuwaiti would report that it had 150 trucks, but KBR's model charged for 403 idle truck days. "KBR provided no explanation for why its model could be reliable when it was 'inconsistent' with the records that Kuwaiti did maintain."

**#2:** KBR's model assumed that all delays at the border were the result of inadequate force protection. The evidence, however, showed that other factors outside of the Army's control contributed to delays. "Yet KBR assigned every delay at the border to the lack of force protection without attempting to disaggregate the causes of those delays."

**#3:** "KBR's spreadsheets calculating idle truck days, 'without substantiating data or records,' were insufficient to establish the reasonableness of its costs. "KBR offered no fact or expert witnesses to support the reasonableness of its estimated number of idle truck days." KBR failed to support its estimates with any representative data whatsoever.

**#4:** KBR only offered conclusory testimony, unsupported by any data or evidence in the record. KBR knew (from the truck leases submitted by Kuwaiti) that Kuwaiti had records showing more precise daily costs for its idle trucks. "It simply strain[ed] credulity" that Kuwaiti, a "sophisticated company" having "over 70 subcontracts with KBR alone," would "not record how much it actually paid its drivers while they waited ..."

**#5:** KBR charged a \$300 rate for all claimed delay days, implicitly assuming that each trailer was always attached to a truck with a driver. The basis for claiming additional delay costs related to drivers and trucks for such stored trailers was not explained and "ignored the fact that, once [Kuwaiti] procured land ... it removed the trailers from trucks and placed them in the yard,

relieving at least some trucks and drivers from having to remain idle the entire time the trailers were delayed."

The Federal Circuit ultimately held that KBR supplied no meaningful evidence demonstrating the reasonableness of its costs, nor had it explained the inconsistencies between its proposed cost model and the factual record. As a result of the foregoing evidentiary deficiencies, the Board's decision was affirmed and KBR denied the full amount of its delay-costs claim.

The lesson here seems to be that any cost-estimating model developed to prove delay-related costs faces a high burden of proof and should, at a minimum: be supported by evidence and documents entered into the record; be substantiated by fact or expert testimony, or both; account for and segregate other factors that could have contributed to the delay; and importantly, not be based on assumptions, especially those which can be contradicted by the factual record.

*By: Sydney Warren*

### ***Supreme Court to Resolve Circuit Split Over Whether District Courts Can Order Discovery in Aid of Private International Arbitration***

This term the Supreme Court is set to resolve a circuit split over the extent of a federal district court's power to order a person "who resides in or is found" in its district "to give testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal" pursuant to 28 U.S.C. Section 1782(a). Put simply, the question before the Court is whether the term "foreign or international tribunal" includes private international arbitration tribunals and thus whether Section 1782 can be used to introduce U.S.-style discovery into private international arbitration.

The Seventh and Fourth Circuits arrived at opposite answers to this question when examining the same set of facts in the same underlying case. In the underlying case, Servotronics sought discovery from Boeing, a third party to the arbitration, to assist Servotronics in a UK-based arbitration against Rolls-Royce.

The Seventh Circuit (with jurisdiction over federal trial courts in IL, IN, and WI) held that the phrase "foreign or international tribunal" in the context of Section 1782(a) means "a state-sponsored, public or quasi-governmental tribunal" and thus that Section

1782(a) does not authorize the district court to compel discovery for use in the UK-arbitration. In stark contrast, the Fourth Circuit held that the phrase “foreign or international tribunal” in the context of Section 1782(a) includes private arbitration, and it therefore found that that Section 1782(a) does authorize the district court to compel discovery for use in the UK-arbitration. The Supreme Court granted cert over the Seventh Circuit case, *Servotronics Inc., v. Rolls-Royce PLC*, 975 F.3d (7th Cir. 2020), and it was set for oral argument on October 5, 2021. Servotronics announced it would drop its appeal on September 8, 2021.

Hence, the dispute remains unresolved on this international law discovery issue. For now, the Fourth Circuit (with jurisdiction over federal trial courts in MD, NC, SC, VA, and WVA) holds that Section 1782 allows district courts to provide discovery assistance to participants in private arbitrations, then U.S. companies subpoenaed in the federal trial courts in those states may be compelled to participate in onerous U.S.-style discovery even though they have chosen international arbitration in part to avoid the burdens of discovery.

Moreover, third parties to the arbitration, like Boeing in the underlying case, who possess material evidence may also be compelled to provide witnesses and documents to assist a private foreign tribunal. This could mean that in an international construction dispute, any party involved in a project would be potentially open to discovery, including expansive document production and depositions, in international arbitration.

Importantly, however, Section 1782 also gives the district court the authority to determine the procedure for the gathering of evidence. Therefore, even if the Supreme Court one day determines that the phrase “foreign or international tribunal” includes private international arbitration, a district court may nevertheless restrict the scope of discovery by applying, in whole or in part, the “practice and procedure of the foreign country or the international tribunal” with jurisdiction over the underlying “proceeding.”

*By: Jennifer Ersin*

***Let's Break Up: The Minnesota Supreme Court's Decision that Each Building in a Multi-Building Complex is a Separate Improvement***

Multi-building condominium projects often raise unique legal issues as they do not squarely fall within the

definitions used in state statutes. The Minnesota Supreme Court recently addressed the unique nature of multi-building condominium projects in *Village Lofts at St. Anthony Falls Association v. Housing Partners III-Lofts*. The Minnesota Supreme Court held that each building in a multi-building condominium project is a separate “improvement to real property” triggering the beginning of the statute of repose. The holding in *Village Lofts* is a reminder of the importance of keeping in mind the statute of repose and understanding the closure effect the statute of repose has on construction defect claims.

Minnesota, like many states, has a statute of repose applicable to construction projects. A statute of repose acts to eliminate a cause of action after a specific period of time. In Minnesota, Minn. Stat. § 541.051 provides that no action arising out of a defect of an improvement to real property shall accrue more than ten years after substantial completion of the construction. The Minnesota Supreme Court in *Village Lofts* was tasked with determining when the statute of repose was triggered for two condominium buildings: Building A and Building B.

In *Village Lofts*, construction defects were discovered in both buildings after a significant amount of time. The defects in Building A were discovered more than ten years after Building A was substantially complete, and the defects in Building B were discovered more than ten years after Building B was substantially complete. Accordingly, the statute of repose would bar the claims if each building was considered separately. To avoid *Village Lofts*' claims being barred by the statute of repose, *Village Lofts* argued that the two buildings were part of the same condominium project and thus should be considered one “improvement to real property” triggering the statute of repose only after Buildings A and B were both complete.

The court ultimately held for the developer and contractors finding that each building was treated separately under the statute of repose. In reaching this conclusion, the court focused on the fact that Building A was completed and turned over for use before Building B was complete, and Building A was completed under a separate contract which did not include the construction of Building B or require Building B to be complete before Building A was completed. Accordingly, each building was a separate improvement which separately triggered the statute of repose. And since the defects in each building were discovered over ten years after the building

was substantially complete, the statute of repose barred the common law claims for construction defects as to both buildings.

The *Village Lofts* decision stands as a notice that the statute of repose may be triggered (and therefore, claims barred) for a completed building in a multi-building project even before the completion of all buildings in the project. Accordingly, parties to any construction contract should pay close attention, not only to the timing limitations in their contract, but also to the applicable statutes of repose in that jurisdiction. Each party should seek a clear definition of the substantial completion of a building, seek to document that date carefully, and ensure, if possible, that a building's substantial completion clearly defined as to whether it is tied to completion of stand-alone amenities (such as a common "club" or "pool" or "reception area").

*By: Molly Maier*

### ***Wyoming Supreme Court Allows Insured to Seek Bad Faith Damages***

In May of this year, the Supreme Court of Wyoming held that a subsidiary of Sinclair Oil could invoke statutory bad faith damages after prevailing in a coverage dispute with its insurer, Infrassure. The court rejected the district court's analysis that accepted the insurer's narrow interpretation of Wyoming's insurance code. On certification from the 10th Circuit, the court found that a policy was "delivered" in Wyoming—and therefore, Wyoming insurance code applied—because the policyholder and the covered risk were in Wyoming. Per the court's decision, proof of physical delivery beyond the stated headquarters' address, to a Wyoming address, was *not* required.

After a 2013 fire and explosion at its petroleum refinery in Sinclair, Wyoming, Sinclair sought business interruption insurance recovery from Infrassure and other insurers. Infrassure rejected a settlement among Sinclair and the market of quota share participants and instead sought to litigate the loss. Subsequently, a panel of appraisers affirmed that the loss value was higher than the settlement that Infrassure rejected, and Sinclair sought to recover its attorney's fees and enhanced interest at 10% under Wyoming Insurance Code. The policy insured a Wyoming company as additional insured and covered refining facilities located in Wyoming. Yet, Infrassure argued that Sinclair could not invoke

Wyoming insurance code's bad faith remedies because the code excludes policies not "issued for delivery" or "delivered" in Wyoming. The Wyoming federal district court agreed with Infrassure's contention that because there was no proof of physical delivery to the insured in Wyoming, Wyoming law did not apply. On appeal, the 10th Circuit accepted the suggestion from Sinclair's appellate counsel (Marc James Ayers, with Bradley's Appellate Practice Group), that the court certify the unsettled and novel question to Wyoming's highest court to determine the applicability of the statute.

The Wyoming Supreme Court rejected the insurer's strict interpretation, finding that the purpose of Wyoming's insurance laws was to "protect public welfare and Wyoming residents..." and that achieving this purpose mandated a liberal interpretation of the law's application to Wyoming interests. The court adopted a rule articulated by the New York courts, holding that a policy is "delivered or issued for delivery" in a state when it "covers both insureds and risks" located in that state. Thus, because the Sinclair subsidiary and the insured refinery were in Wyoming, Sinclair was entitled to the protections mandated by the insurance law.

Bad faith disputes arise in the context of construction as well. When negotiating first party insurance coverage—such as builders risk policies—insureds should pay close attention to the choice of law provisions in the policy to ensure the applicable jurisdiction recognizes first party bad faith claims.

*By: Lee-Ann Brown*

### ***Texas Update: HB 1578 – Attorney's Fees***

Effective September 1, 2021: HB 1578 closes the loophole of the previous version of Chapter 38 of the Texas Civil Practice & Remedies Code so that parties will be able to recover attorneys' fees from LLCs, LLPs, LPs, or other organizations in lawsuits for breach of contract.

Generally, Texas law provides that each party to a lawsuit is responsible for her attorneys' fees. However, Texas law has long provided that a party in a breach of contract claim may recover her attorney's fees in addition to the damages she suffers. This exception to the rule has certain procedures that must be followed and is outlined in Chapter 38 of the Texas Civil Practice & Remedies Code.

While parties to lawsuits have long utilized this exception to the rule, Chapter 38's language did not explicitly allow for the recovery of attorney's fees when the party who is held responsible for the breach of contract was not either an individual or a corporation. While in practice this seems unreasonable, the plain language of Chapter 38 excluded other business entities such as limited partnerships (LPs), limited liability partnerships (LLPs) and limited liability companies (LLCs). This led to decisions by the Texas courts that pointed out that if the legislature meant for Chapter 38 to include LLCs, LLPs and LPs, then it would have written the law to specifically include those entities. Ultimately, many Texas courts disallowed the recovery of attorney's fees in cases involving entities other than corporations and individuals.

HB 1578, which goes into effect for lawsuits filed on or after September 1, 2021, amends Chapter 38 to specifically include these business entities that are not traditional corporations. Under the new law, with some limited exceptions, attorney's fees are available in lawsuits for breach of contract involving a: corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization.

While correcting the statute so that it performs as intended, this change is a double-edged sword that may affect businesses. If a business chose an entity form in part based on avoiding potential attorney's fee awards, then this change to the law will impact its business. This may also impact how these businesses, who find themselves in litigation, manage their legal risks and evaluate claims.

It is important to note that while a change in Chapter 38 will have a great impact on breach of contract claims, businesses can still utilize their contracts to provide consistency with claims and the availability of attorney's fees for breach of those contracts. As always, business owners should consult with their counsel to discuss their contracts and the impact this may have on risk mitigation and claims management in the future.

*By: Jon Paul Hoelscher*

### *Afghanistan Withdrawal: The Government Contractor's Guide to Terminations for Convenience*

With the United States' recent withdrawal from Afghanistan, it is only a matter of time before the government begins terminating certain federal contracts for the convenience of the government. Accordingly, government contractors need to know their rights and obligations so that they can be best positioned if one or more of their contracts are terminated. This article provides a user-friendly guide for government contractors on these important rights and obligations.

#### I. General

"Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest" (Federal Acquisition Regulation (FAR) 2.101). The right to terminate for convenience is made a part of almost all government contracts by inclusion of the standard Termination for the Convenience of the Government clauses in FAR 52.249-1 through -5. The Termination for Convenience clause in commercial item contracts issued under FAR Part 12 can be found in paragraph (l) of FAR 52.212-4. For government contracts that do not contain a termination for convenience clause, such a clause nonetheless is generally read into the contract by operation of law under the "Christian Doctrine" (see *G.L. Christian & Assoc. v. United States*, 312 F.2d 418 (Ct. Cl. 1963)).

#### II. Procedures

Once a government contract has been terminated for the convenience of the government, a series of duties for both the prime contractor and the contracting officer are triggered under FAR 49.104 and FAR 49.105, respectively. These duties are discussed in turn below.

##### A. Duties of Prime Contractor

FAR 49.104 (Duties of Prime Contractor After Receipt of Notice of Termination) states that "[a]fter receipt of the notice of termination, the contractor shall comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO [Termination Contracting Officer]."

FAR 49.104 states that "the notice and clause applicable to convenience terminations" generally require that the contractor:

1. Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;
2. Terminate all subcontracts related to the terminated portion of the prime contract;
3. Immediately advise the TCO of any special circumstances precluding the stoppage of work;
4. Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;
5. Take necessary or directed action to protect and preserve property in the contractor's possession in which the government has or may acquire an interest and, as directed by the TCO, deliver the property to the government;
6. Promptly notify the TCO in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract;
7. Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
8. Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
9. Dispose of termination inventory, as directed or authorized by the TCO.

Accordingly, government contractors who have had a contract terminated for convenience need to be mindful of the duties that the FAR imposes upon them and should adequately document their compliance with these duties.

#### B. Duties of Contracting Officer

FAR 49.105 (Duties of Termination Contracting Officer After Issuance of Notice of Termination), in turn, states that "[c]onsistent with the termination clause and the notice of termination, the TCO shall":

1. Direct "the action required of the prime contractor;"
2. Examine the prime contractor's termination settlement proposal and, when appropriate, the settlement proposals of subcontractors;

3. Promptly negotiate settlement with the contractor and enter into a settlement agreement; and
4. Promptly settle the contractor's settlement proposal "by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement" (see FAR 49.105(a)).

Next, FAR 49.105(b) states that, "[t]o expedite settlement, the TCO may request specially qualified personnel to":

1. Assist in dealings with the contractor;
2. Advise on legal and contractual matters;
3. Conduct accounting reviews and advise and assist on accounting matters; and
4. Perform the following functions regarding termination inventory (see FAR subpart 45.6): verify its existence; determine qualitative and quantitative allocability; make recommendations concerning serviceability; undertake necessary screening and redistribution; and assist the contractor "in accomplishing other disposition."

Moreover, FAR 49.105(c) states that the TCO "should promptly hold a conference with the contractor to develop a definite program for effecting the settlement." In addition, the FAR states that, "[w]hen appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend."

FAR 49.105(c) goes on to state that "[t]opics that should be discussed at the conference and documented include":

1. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
2. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
3. Status of any continuing work;
4. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
5. Names of subcontractors involved and the dates termination notices were issued to them;

6. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
7. Arrangements for transfer of title and delivery to the government of any material required by the government;
8. General “principles and procedures to be followed in the protection, preservation, and disposition of the contractors and subcontractors’ termination inventories, including the preparation of termination inventory schedules;”
9. Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (FAR 49.602-3);
10. Accounting review of settlement proposals;
11. Any requirement for interim financing in the nature of partial payments;
12. Tentative “time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules (see [FAR] 49.206-3 and [FAR] 49.303-2);”
13. Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in FAR 49.601-2); and
14. The “[o]bligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect in accordance with [FAR] 15.403-4(a)(1) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in [FAR] 15.403-4.”

Although the duties set forth under FAR 49.105 are generally directed to the contracting officer, contractors should keep an eye on these obligations and do their best to make sure that the contracting officer is adhering to them.

### III. Termination Settlement Proposals

In exchange for the government retaining the right to terminate most federal contracts for the convenience of the government, the FAR allows contractors to submit a convenience termination settlement proposal in which

the terminated contractor may seek recovery of certain costs. FAR 49.201(a) states that such a settlement “should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit.”

There are two basic approaches to convenience termination settlement proposals: the “inventory basis” and the “total cost” basis. The submission requirements under these two approaches are discussed in turn below. In addition, we discuss unique convenience termination rules for commercial item contracts under FAR 12.403, as well as the general timing requirements for submitting convenience termination settlement proposals.

#### A. Inventory Basis

FAR 49.206-2(a) states that “[u]se of the inventory basis for settlement proposals is preferred.” Under the inventory basis, “the contractor may propose only costs allocable to the terminated portion of the contract, and the settlement proposal must itemize separately” the following: (1) “[m]etals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;” (2) charges such as engineering costs, initial costs, and general administrative costs; (3) costs of settlements with subcontractors; (4) settlement expenses; and (5) other “proper charges.”

FAR 49.206-2(a) additionally states that “[a]n allowance for profit ([FAR] 49.202) or adjustment for loss ([FAR] 49.203(b)) must be made to complete the gross settlement proposal.” In addition, “[a]ll unliquidated advance and progress payments and all disposal and other credits known when the proposal is submitted must then be deducted.”

FAR 49.206-2(a) goes on to state that the “inventory basis is also appropriate for use under the following circumstances.”

1. The “partial termination of a construction or related professional services contract;”
2. The “partial or complete termination of supply orders under any terminated construction contract;” and
3. The “complete termination of a unit-price (as distinguished from a lump-sum) professional services contract.”

#### B. Total Cost Basis

Concerning the “total cost” basis of settlement, FAR 49.206-2(b) states: “When use of the inventory basis is not practicable or will unduly delay settlement, the total-cost basis (SF-1436) may be used if approved in advance by the TCO as in the following examples”:

1. If production has not commenced and the accumulated costs represent planning and preproduction or get ready expenses;
2. If, under the contractor’s accounting system, unit costs for work in process and finished products cannot readily be established;
3. If the contract does not specify unit prices; and
4. If the termination is complete and involves a letter contract.

Accordingly, contractors seeking to use the “total cost” basis should confirm in writing with the TCO in advance that the “total cost” basis is acceptable.

“When the total-cost basis is used under a complete termination, the contractor must itemize all costs incurred under the contract up to the effective date of termination” (FAR 49.206-2(b)(2)). Further, “[t]he costs of settlements with subcontractors and applicable settlement expenses must also be added,” “[a]n allowance for profit ([FAR] 49.202) or adjustment for loss ([FAR] 49.203(c)) must be made,” and “[t]he contract price for all end items delivered or to be delivered and accepted must be deducted.” “All unliquidated advance and progress payments and disposal and other credits known when the proposal is submitted must also be deducted.”

With respect to the use of the total-cost basis under a partial termination, the FAR states that the “settlement proposal shall not be submitted until completion of the continued portion of the contract” (FAR 49.206-2(b)(3)). The FAR also states that the settlement proposal “must be prepared as in [FAR 49.206-2(b)(2)], except that all costs incurred to the date of completion of the continued portion of the contract must be included.”

However, if “a construction contract or a lump-sum professional services contract is completely terminated, the contractor shall”:

1. Use the total cost basis of settlement;
2. Omit line 10 “Deduct-Finished Product Invoiced or to be Invoiced” from Section II of Standard

Form-1436 Settlement Proposal (Total Cost Basis); and

3. “Reduce the gross amount of the settlement by the total of all progress and other payments” (see FAR 49.206-2(b)(4)).

FAR 49.602, in turn, outlines the standard forms used to prepare settlement proposals under both the inventory and total cost basis.

Generally speaking, a convenience termination settlement proposal should seek costs that would otherwise be allowable under FAR Part 31 (see e.g., FAR 52.249-2(i)). FAR 31.205-42 (Termination Costs) sets out specific cost principles applicable to certain unique termination situations. Notably, “settlement expenses,” including the costs incurred in the preparation and presentation of convenience termination settlement proposals, may be allowable costs (see FAR 31.205-42(g)). Finally, in instances in which the prime contract allows for partial payments, “a prime contractor may request [partial payments] on the form prescribed in [FAR] 49.602-4 at any time after submission of interim or final settlement proposals,” and “[t]he Government will process applications for partial payments promptly” (see FAR 49.112-1(a)).

### C. Commercial Item Terminations

Unique termination for convenience procedures apply to commercial item contracts covered by FAR Part 12. Specifically, FAR 12.403(d) provides that, when the contracting officer terminates a contract for commercial items for the government’s convenience, the contractor shall be paid:

1. The “percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed-price or fixed-price with economic price adjustment contracts;” or
2. An “amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule;” and
3. Any “charges the contractor can demonstrate directly resulted from the termination.”

FAR 12.403(d) goes on to state that the “contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the



cost accounting standards or the contract cost principles in [FAR] part 31.” Importantly, the government “does not have any right to audit the contractor’s records solely because of the termination for convenience.”

Finally, FAR 12.403(d) provides that the parties generally “should mutually agree upon the requirements of the termination proposal,” and that the parties “must balance” the government’s “need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.” Thus, unlike settlement proposals submitted under FAR Part 49, there is no standard form for submitting a settlement proposal under FAR Part 12.

#### D. Timing Requirements

FAR 52.249-2 (Termination for Convenience of the Government (Fixed-Price)), which is the most common convenience termination clause, states in relevant part:

(c) The contractor shall submit complete termination inventory schedules *no later than 120 days from the effective date of termination*, unless extended in writing by the contracting officer upon written request of the contractor within this 120-day period

\* \* \*

(e) After termination, the contractor shall submit a final termination settlement proposal to the contracting officer in the form and with the certification prescribed by the contracting officer. The contractor shall submit the proposal promptly, *but no later than one year from the effective date of termination*, unless extended in writing by the contracting officer upon written request of the contractor within this one-year period. However, if the contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the contractor fails to submit the proposal within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined. (*emphasis added*)

Notably, the timing requirements for submitting convenience termination settlement proposals are generally consistent across FAR clauses for traditional government contracts (see e.g., FAR 52.249-3 (Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)) (containing similar timing requirements under subparagraphs (c) and (e)); FAR 52.249-5

(Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)) Generally, commercial item convenience termination submissions under FAR Part 12 do not contain similar timing requirements.

That said, each contract and set of facts should be analyzed on a case-by-case basis to ensure that the contractor is complying with applicable submission deadlines, and submission deadlines should be calculated conservatively regardless of which FAR clause applies.

Notably, the FAR does not impose a time limit by which the TCO must complete settlement negotiations with a terminated contractor. However, for small business concerns, the FAR dictates that auditors and the TCO “shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns” (see FAR 49.101(d)).

#### IV. Claims and Appeal Rights

In *Gardner Machinery Corp. v. United States*, 14 Cl. Ct. 286 (1988), the U.S. Claims Court — which is the predecessor to the U.S. Court of Federal Claims — distinguished settlement proposals from Contract Disputes Act (CDA) claims as follows:

A Settlement proposal is contemplated under the regulations as a request for opening negotiations. It is not contemplated by the regulations that settlement proposals be used for the submission of final demand, final decision requested CDA claims. That is not to say that CDA claims may not grow out of the settlement proposal process or be converted to a CDA claim. It simply means that at the point of impasse in the negotiation process, the contractor must submit or resubmit its written claim, now in dispute for a finite amount of money, to the contracting officer and request a final decision thereon.

While the foregoing summary may seem straightforward, the rules in this area can actually be quite tricky. Thus, it is important to seek guidance from experienced legal counsel when seeking to convert a convenience termination settlement proposal to a formal “claim” under the CDA.

Once a contracting offer issues a final decision on a contractor’s claim, a dissatisfied contractor may generally appeal that decision to the cognizant agency board of contract appeals within *90 days* of receipt of the decision, or bring suit on the claim in the U.S. Court of Federal Claims within *12 months* (see 41 U.S.C. § 7104).

## V. Conclusion

Considering the United States' recent withdrawal from Afghanistan, an increase in terminations of federal contracts for the convenience of the government appears to be inevitable and imminent. Government contractors faced with a termination for convenience should be prepared to properly account for and timely submit recoverable costs in a convenience termination settlement proposal, as discussed in this guide.

*By: Aron C. Beezley & Sarah Sutton Osborne*

### ***Safety Moment for the Construction Industry***

Construction can be dangerous work. Some of the very real, but perhaps less obvious, safety hazards or contributing factors on any type of construction project may include: vehicle collisions, simultaneous operations, short-service employees, on-site culture, and less-than-clear or infrequent communication. Construction sites are transient in nature. To account for constant changes in surrounding environments, safety supervisors must work together and communicate safety information early and often.

### ***Coronavirus/COVID-19***

Our firm has endeavored to compile a number of helpful resources to assist our clients to navigate the uncertainties of COVID-19, with a heavy emphasis on issues affecting the construction industry. If you have questions related to the coronavirus and how it may impact you or your business, please visit: <https://www.bradley.com/practices-and-industries/practices/coronavirus-disease-2019-covid-19>. This site contains various resources across different areas, including employment, insurance, healthcare, as well as the construction industry.

Additionally, our Practice Group maintains its **BuildSmart Blog** and has published a number of coronavirus-related blog posts to help our clients in the construction industry navigate these issues: <https://www.buildsmartbradley.com/>. If you would like to get the blogs routinely, we invite you to subscribe to the blog at the above web address.

If you have additional questions that are not answered by these resources or you would like to discuss further, please contact an attorney in our practice group to help you find an answer to your question.

## ***Bradley Arant Lawyer Activities***

In U.S. News' 2021 "Best Law Firms" rankings, **Bradley's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in Construction Law and Construction Litigation.

This fall, **Bradley's Construction and Procurement Practice Group** will be conducting our Construction Law 101: Back to the Basics seminars, in which we will be presenting on a variety of construction topics, including basic contract principles, essential contract terms, project documentation, and the intersection of bankruptcy and construction. Who should attend? Short answer: anyone in the construction industry. We will be presenting topics that are helpful to project managers, project engineers, superintendents, contract administrators, owners, architects, subcontractors, and suppliers.

The program begins at 7:30am with a networking breakfast, followed by our Construction 101: Back to the Basics presentations, and will conclude at 12pm. For questions or to RSVP, please contact Hayden DeGrange ([hdegrange@bradley.com](mailto:hdegrange@bradley.com))

The dates for the seminar in each of our offices is below:

- Charlotte: September 17
- Nashville: September 17
- Houston: September 24
- Birmingham: October 1
- Jackson: October 1

**Bradley's Construction Practice** was ranked No. 4 in the nation by *Construction Executive* for 2021.

*Chambers USA* ranked Bradley as one of the top firms in the nation for construction for 2021. The firm's Washington D.C., Mississippi, Alabama, Texas and North Carolina offices were also recognized as a top firm for those locales for Construction Law.

*Chambers USA* also ranks lawyers in specific areas of law based on direct feedback received from clients. **Mabry Rogers, Jim Archibald, Doug Patin, Bob Symon, Ralph Germany, Bill Purdy, Ryan Beaver, Ian Faria, and Jon Paul Hoelscher** are ranked in Construction. **Aron Beezley** is ranked in the area of Government Contracts.

In *Best Lawyers in America* for 2022, **David Pugh** was named Lawyer of the Year in Construction for Birmingham, AL.

**Axel Bolvig, David Taylor, David Owen, Doug Patin, Mabry Rogers, Eric Frechtel, Ian Faria, David Pugh, Jim Collura, Jim Archibald, Jared Caplan, Jon Paul Hoelscher, Monica Wilson Dozier, Avery Simmons, David Bashford, Bryan Thomas, Mike Koplan, Ralph Germany, Bob Symon, Ryan Beaver, Wally Sears, and Bill Purdy** have been recognized by *Best Lawyers in America* in the area of Construction Law for 2022.

**Axel Bolvig, David Owen, Mabry Rogers, Ian Faria, David Pugh, Jim Archibald, Michael Bentley, Bob Symon, David Bashford, Ryan Beaver, Doug Patin, Jon Paul Hoelscher and Russell Morgan** were also recognized by *Best Lawyers in America* for Litigation - Construction for 2022.

**Keith Covington and John Hargrove** were recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment.

**Andrew Bell, Kyle Doiron, Amy Garber, Matt Lilly, Abba Harris, Carly Miller, and Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2022.

**Jim Archibald, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ryan Beaver, Ian Faria, Jon Paul Hoelscher, Doug Patin, Ralph Germany, David Taylor, and David Owen** were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named *Super Lawyer* for Civil Litigation. **Philip Morgan** was named Texas *Super Lawyers* "Rising Stars" in Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Abba Harris, Kyle Doiron, Bryan Thomas, Carly Miller, and Chris Selman** were listed as "Rising Stars" in Construction Litigation. **Sarah Osborne** was named *Super Lawyers* "Rising Stars" for Civil Litigation. **Matt Lilly** was named North Carolina *Super Lawyers* "Rising Stars" in Construction Litigation. **Bill Purdy** was ranked as Top 50 in Mississippi *Super Lawyers*.

**Bob Symon** was recently accepted as a Fellow in the American College of Construction Lawyers. Other Fellows include **Jim Archibald, Bill Purdy, Mabry Rogers, and Wally Sears**.

**Jim Archibald, Axel Bolvig, Jim Collura, Keith Covington, Ian Faria, Doug Patin, David Pugh, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, and David Taylor** have been rated AV Preeminent attorneys in Martindale-Hubbell.

**Jim Archibald, Axel Bolvig, Ian Faria, Eric Frechtel, Mabry Rogers, Bob Symon, David Taylor, Bryan Thomas and Michael Knapp**, have been selected as Fellows of the Construction Lawyers Society of America (CLSA), and **Carly Miller and Aman Kahlon** were selected as Associate Fellows of the CLSA.

**Luke Martin** was recently named one of Birmingham's "Top 40 Under 40" by the *Birmingham Business Journal* in its annual honor for young professionals.

**Monica Wilson Dozier** was selected to The Mecklenburg Times' list of the "50 Most Influential Women" for 2020, whose honorees represent the most influential women in business, government, law, education and not-for-profit fields in the Charlotte region. The annual list is selected by a panel of independent business leaders and is based on professional accomplishment and community involvement.

**David Pugh** has been re-selected to be the Chairman of the Hospital/Healthcare Construction Track at the ABC's annual User's Summit, which is sponsored by Bradley, and was held on May 12-14, 2021 at the Ritz-Carlton in Dallas, TX.

**Aron Beezley and Sarah Osborne** will be the featured speakers at a Bid Protest Lunch & Learn webinar on September 29, 2021.

**Monica Wilson Dozier** will serve as a panelist on September 28, 2021 for E4 Carolinas' Managing Renewable Generation Project Risk webinar.

On September 7, 2021, **Aron Beezley** will be serving as a panelist on a webinar about "Protests and Disputes 101" hosted by the Defense Acquisition University.

In August, **Monica Wilson Dozier and Andrew Tuggle** published "How solar installers can protect themselves from ongoing bans on internationally sourced components" in *Solar Power World*.

**Cris Farrar and Monica Wilson Dozier** presented "Allocating Risks in Solar Power EPC Contracts – Texas Style!" in partnership with the Texas Solar Power Association on July 14, 2021 via webinar.

On July 12, 2021, Bradley sponsored E4 Carolinas' Energy Technology Series webinar featuring electric vehicle manufacturer ARRIVAL's game-changing technologies and new North American headquarters located in Charlotte.

**Monica Wilson Dozier** served as a panelist on June 15, 2021, for the *Charlotte Business Journal's* Future of Energy webinar, featuring energy industry leaders' viewpoints on the U.S.' mid-century timetable to eliminate greenhouse gas emissions from the energy sector. *Charlotte Business Journal* featured the panelists and provided a summary of the webinar in its June edition.

On April 15, 2021, **Monica Wilson Dozier** and **Bart Kempf** presented for Bradley's Earth Month Series a webinar entitled "The Biden Administration and Renewable Energy Products," detailing proposed and predicted national energy policy changes as a result of the new administration.

**Jay Bender** and **James Bailey** recently authored a book entitled "Construction Issues in Bankruptcy: Executory Contracts, Mechanic's Liens and Other Issues that Arise in Construction-Related Bankruptcies," which is written for the people who run construction companies, construction lawyers, and bankruptcy professionals representing parties in distressed construction matters.

**Amy Garber**, together with a client, recently presented to a class at Morgan State University on risk allocation in construction contracts as a part of the construction claims management course.

**Anna-Bryce Hobson** was recently selected to serve on the Wake Forest Law School Rose Council, a leadership council for graduates who have graduated within the last ten years. The Rose Council builds community by encouraging recent grads to increase their involvement by volunteering, attending law school events, staying informed, and giving back.

**David Taylor** was named to the Board of Directors of the Nashville Conflict Resolution Center.

**Abba Harris** recently served as the President of the Greater Birmingham Chapter of the National Association of Women in Construction (NAWIC). Abba was also recently awarded the first-ever Jo-Ann Golden Humanitarian Award from the Southeast Region of NAWIC.

**Michael Knapp** was appointed to the Board of Trustees for the Patriot Military Family Foundation, a group that raises money and awareness to benefit wounded veterans and their families.

**David Taylor** was reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee. He was also recently reappointed to the Legal Advisory Counsel of the Associated General Contractors of Middle Tennessee.

**Ian Faria**, **Jon Paul Hoelscher** and **Andrew Stubblefield** became board certified by the Texas Board of Legal Specialization in Construction Law. Only about 100 or so attorneys out of more than 100,000 licensed Texas attorneys hold the certification.

**Anna-Bryce Hobson** recently joined the Commercial Real Estate Women of Charlotte Sponsorship Committee.

**Lee-Ann Brown** recently joined the Legislative Committee of the Associated Builders & Contractors of Washington, DC.

## NOTES

### ***Disclaimer and Copyright Information***

The lawyers at Bradley Arant Boult Cummings LLP, including those who practice in the construction and procurement fields of law, monitor the law and regulations and note new developments as part of their practice. This newsletter is part of their attempt to inform their readers about significant current events, recent developments in the law and their implications. *Receipt of this newsletter is not intended to, and does not, create an attorney-client, or any other, relationship, duty or obligation.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at [www.bradley.com](http://www.bradley.com).

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

## NOTES

### ***Disclaimer and Copyright Information***

The lawyers at Bradley Arant Boult Cummings LLP, including those who practice in the construction and procurement fields of law, monitor the law and regulations and note new developments as part of their practice. This newsletter is part of their attempt to inform their readers about significant current events, recent developments in the law and their implications. *Receipt of this newsletter is not intended to, and does not, create an attorney-client, or any other, relationship, duty or obligation.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at [www.bradley.com](http://www.bradley.com).

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

**Construction and Procurement Practice Group Contact Information:**

James F. Archibald, III (Birmingham), Attorney.....	(205) 521-8520.....	<a href="mailto:jarchibald@bradley.com">jarchibald@bradley.com</a>
David H. Bashford (Birmingham), Attorney.....	(205) 521-8217.....	<a href="mailto:dbashford@bradley.com">dbashford@bradley.com</a>
Ryan Beaver (Charlotte), Attorney.....	(704) 338-6038.....	<a href="mailto:rbeaver@bradley.com">rbeaver@bradley.com</a>
Aron Beezley (Washington, D.C.), Attorney.....	(202) 719-8254.....	<a href="mailto:abeezley@bradley.com">abeezley@bradley.com</a>
Andrew W. Bell (Houston), Attorney.....	(713) 576-0379.....	<a href="mailto:abell@bradley.com">abell@bradley.com</a>
Axel Bolvig, III (Birmingham), Attorney.....	(205) 521-8337.....	<a href="mailto:abolvig@bradley.com">abolvig@bradley.com</a>
Lee-Ann C. Brown (Washington, D.C.), Attorney.....	(202) 719-8212.....	<a href="mailto:labrown@bradley.com">labrown@bradley.com</a>
T. Michael Brown (Birmingham), Attorney.....	(205) 521-8462.....	<a href="mailto:mbrown@bradley.com">mbrown@bradley.com</a>
Stanley D. Bynum (Birmingham), Attorney.....	(205) 521-8000.....	<a href="mailto:sbynum@bradley.com">sbynum@bradley.com</a>
Jared B. Caplan (Houston), Attorney.....	(713) 576-0306.....	<a href="mailto:jcaplan@bradley.com">jcaplan@bradley.com</a>
Frank M. Caprio (Huntsville), Attorney.....	(256) 517-5142.....	<a href="mailto:fcaprio@bradley.com">fcaprio@bradley.com</a>
Maria K. Carisetti (Charlotte), Attorney.....	(704) 338-6002.....	<a href="mailto:mcarisetti@bradley.com">mcarisetti@bradley.com</a>
Melissa Broussard Carroll (Houston), Attorney.....	(713) 576-0357.....	<a href="mailto:mcarroll@bradley.com">mcarroll@bradley.com</a>
James A. Collura (Houston), Attorney.....	(713) 576-0303.....	<a href="mailto:jcollura@bradley.com">jcollura@bradley.com</a>
Timothy R. Cook (Houston), Attorney.....	(713) 576-0350.....	<a href="mailto:tcook@bradley.com">tcook@bradley.com</a>
F. Keith Covington (Birmingham), Attorney.....	(205) 521-8148.....	<a href="mailto:kcovington@bradley.com">kcovington@bradley.com</a>
Jeffrey Davis (Houston), Attorney.....	(713) 576-0370.....	<a href="mailto:jsdavis@bradley.com">jsdavis@bradley.com</a>
Kyle M. Doiron (Nashville), Attorney.....	(615) 252-3594.....	<a href="mailto:kdoiron@bradley.com">kdoiron@bradley.com</a>
Monica Wilson Dozier (Charlotte), Attorney.....	(704) 338-6030.....	<a href="mailto:mdozier@bradley.com">mdozier@bradley.com</a>
Jennifer Morrison Ersin (Jackson), Attorney.....	(601) 592-9937.....	<a href="mailto:jersin@bradley.com">jersin@bradley.com</a>
Ian P. Faria (Houston), Attorney.....	(713) 576-0302.....	<a href="mailto:ifaria@bradley.com">ifaria@bradley.com</a>
Cristopher S. Farrar (Houston), Attorney.....	(713) 576-0315.....	<a href="mailto:cfarrar@bradley.com">cfarrar@bradley.com</a>
Robert Ford (Houston), Attorney.....	(713) 576-0356.....	<a href="mailto:rford@bradley.com">rford@bradley.com</a>
Mary Elizondo Frazier (Houston), Attorney.....	(713) 576-0371.....	<a href="mailto:mfrazier@bradley.com">mfrazier@bradley.com</a>
Eric A. Frechtel (Washington, D.C.), Attorney.....	(202) 719-8249.....	<a href="mailto:efrechtel@bradley.com">efrechtel@bradley.com</a>
Amy Garber (Washington, D.C.), Attorney.....	(202) 719-8237.....	<a href="mailto:agarber@bradley.com">agarber@bradley.com</a>
Ralph Germany (Jackson), Attorney.....	(601) 592-9963.....	<a href="mailto:rgermany@bradley.com">rgermany@bradley.com</a>
John Mark Goodman (Birmingham), Attorney.....	(205) 521-8231.....	<a href="mailto:jmgoodman@bradley.com">jmgoodman@bradley.com</a>
Nathan V. Graham (Houston), Attorney.....	(713) 576-0305.....	<a href="mailto:ngraham@bradley.com">ngraham@bradley.com</a>
Nathaniel J. Greeson (Washington, D.C.), Attorney.....	(202) 719-8202.....	<a href="mailto:ngreeson@bradley.com">ngreeson@bradley.com</a>
J. Douglas Grimes (Charlotte), Attorney.....	(704) 338-6031.....	<a href="mailto:dgrimes@bradley.com">dgrimes@bradley.com</a>
John W. Hargrove (Birmingham), Attorney.....	(205) 521-8343.....	<a href="mailto:jhargrove@bradley.com">jhargrove@bradley.com</a>
Abigail B. Harris (Birmingham), Attorney.....	(205) 521-8679.....	<a href="mailto:aharris@bradley.com">aharris@bradley.com</a>
Anna-Bryce Hobson (Charlotte), Attorney.....	(704) 338-6047.....	<a href="mailto:aflowe@bradley.com">aflowe@bradley.com</a>
Jon Paul Hoelscher (Houston), Attorney.....	(713) 576-0304.....	<a href="mailto:jhoelscher@bradley.com">jhoelscher@bradley.com</a>
Aman S. Kahlon (Birmingham), Attorney.....	(205) 521-8134.....	<a href="mailto:akahlon@bradley.com">akahlon@bradley.com</a>
Ryan T. Kinder (Houston), Attorney.....	(713) 576-0313.....	<a href="mailto:rkinder@bradley.com">rkinder@bradley.com</a>
Michael W. Knapp (Charlotte), Attorney.....	(704) 338-6004.....	<a href="mailto:mknapp@bradley.com">mknapp@bradley.com</a>
Michael S. Koplman (Washington, D.C.), Attorney.....	(202) 719-8251.....	<a href="mailto:mkoplman@bradley.com">mkoplman@bradley.com</a>
Daniel L. Lawrence (Nashville), Attorney.....	(615) 252-3549.....	<a href="mailto:dlawrence@bradley.com">dlawrence@bradley.com</a>
Matthew K. Lilly (Charlotte), Attorney.....	(704) 338-6048.....	<a href="mailto:mlilly@bradley.com">mlilly@bradley.com</a>
Molly Maier (Houston), Attorney.....	(713) 576-0393.....	<a href="mailto:mmaier@bradley.com">mmaier@bradley.com</a>
Lisa Markman (Washington, D.C.), Attorney.....	(202) 719-8291.....	<a href="mailto:lmarkman@bradley.com">lmarkman@bradley.com</a>
Luke D. Martin (Birmingham), Attorney.....	(205) 521-8570.....	<a href="mailto:lumartin@bradley.com">lumartin@bradley.com</a>
Kevin C. Michael (Nashville), Attorney.....	(615) 252-3840.....	<a href="mailto:kmichael@bradley.com">kmichael@bradley.com</a>
Carly E. Miller (Birmingham), Attorney.....	(205) 521-8350.....	<a href="mailto:camiller@bradley.com">camiller@bradley.com</a>
Kenneth J. Milne (Houston), Attorney.....	(713) 576-0335.....	<a href="mailto:kmilne@bradley.com">kmilne@bradley.com</a>
Philip J. Morgan (Houston), Attorney.....	(713) 576-0331.....	<a href="mailto:pmorgan@bradley.com">pmorgan@bradley.com</a>
E. Sawyer Neeley (Dallas), Attorney.....	(214) 939-8722.....	<a href="mailto:sneely@bradley.com">sneely@bradley.com</a>
Trey Oliver (Birmingham), Attorney.....	(205) 521-8141.....	<a href="mailto:toliver@bradley.com">toliver@bradley.com</a>
Sarah Sutton Osborne (Huntsville), Attorney.....	(256) 517-5127.....	<a href="mailto:sosborne@bradley.com">sosborne@bradley.com</a>
David W. Owen (Birmingham), Attorney.....	(205) 521-8333.....	<a href="mailto:dowen@bradley.com">dowen@bradley.com</a>
Emily Oyama (Birmingham), Construction Researcher.....	(205) 521-8504.....	<a href="mailto:eoyama@bradley.com">eoyama@bradley.com</a>
Douglas L. Patin (Washington, D.C.), Attorney.....	(202) 719-8241.....	<a href="mailto:dpatin@bradley.com">dpatin@bradley.com</a>
Sabah Petrov (Washington, D.C.), Attorney.....	(202) 719-8268.....	<a href="mailto:spetrov@bradley.com">spetrov@bradley.com</a>
J. David Pugh (Birmingham), Attorney.....	(205) 521-8314.....	<a href="mailto:dpugh@bradley.com">dpugh@bradley.com</a>
Bill Purdy (Jackson), Attorney.....	(601) 592-9962.....	<a href="mailto:bpurdy@bradley.com">bpurdy@bradley.com</a>
Alex Purvis (Jackson), Attorney.....	(601) 592-9940.....	<a href="mailto:apurvis@bradley.com">apurvis@bradley.com</a>
Patrick R. Quigley (Washington, D.C.), Attorney.....	(202) 719-8279.....	<a href="mailto:pquigley@bradley.com">pquigley@bradley.com</a>
Gabriel Rincón (Houston), Attorney.....	(713) 576-0399.....	<a href="mailto:grincon@bradley.com">grincon@bradley.com</a>

E. Mabry Rogers (Birmingham), Attorney .....	(205) 521-8225 .....	<a href="mailto:mrogers@bradley.com">mrogers@bradley.com</a>
Brian Rowson (Charlotte), Attorney .....	(704) 338-6008 .....	<a href="mailto:browlson@bradley.com">browlson@bradley.com</a>
Robert L. Sayles (Dallas), Attorney .....	(214) 939-8762 .....	<a href="mailto:rsayles@bradley.com">rsayles@bradley.com</a>
Peter Scaff (Houston), Attorney .....	(713) 576-0372 .....	<a href="mailto:pscaff@bradley.com">pscaff@bradley.com</a>
Justin T. Scott (Houston), Attorney .....	(713) 576-0316 .....	<a href="mailto:jtscott@bradley.com">jtscott@bradley.com</a>
Walter J. Sears III (Birmingham), Attorney .....	(205) 521-8202 .....	<a href="mailto:wsears@bradley.com">wsears@bradley.com</a>
J. Christopher Selman (Birmingham), Attorney .....	(205) 521-8181 .....	<a href="mailto:cselman@bradley.com">cselman@bradley.com</a>
Saira Siddiqui (Houston), Attorney .....	(713) 576-0353 .....	<a href="mailto:ssiddiqui@bradley.com">ssiddiqui@bradley.com</a>
Frederic L. Smith (Birmingham), Attorney .....	(205) 521-8486 .....	<a href="mailto:fsmith@bradley.com">fsmith@bradley.com</a>
Gabrielle A. Sprio (Huntsville), Attorney .....	(256) 517-5191 .....	<a href="mailto:gsprio@bradley.com">gsprio@bradley.com</a>
H. Harold Stephens (Huntsville), Attorney .....	(256) 517-5130 .....	<a href="mailto:hstephens@bradley.com">hstephens@bradley.com</a>
Robert J. Symon (Washington, D.C.), Attorney .....	(202) 719-8294 .....	<a href="mailto:rsymon@bradley.com">rsymon@bradley.com</a>
David K. Taylor (Nashville), Attorney .....	(615) 252-2396 .....	<a href="mailto:dtaylor@bradley.com">dtaylor@bradley.com</a>
D. Bryan Thomas (Nashville), Attorney .....	(615) 252-2318 .....	<a href="mailto:dbthomas@bradley.com">dbthomas@bradley.com</a>
Alex Thrasher (Birmingham), Attorney .....	(205) 521-8891 .....	<a href="mailto:athrasher@bradley.com">athrasher@bradley.com</a>
Slates S. Veazey (Jackson), Attorney .....	(601) 592-9925 .....	<a href="mailto:sveazey@bradley.com">sveazey@bradley.com</a>
Sydney M. Warren (Houston), Attorney .....	(713) 576-0354 .....	<a href="mailto:swarren@bradley.com">swarren@bradley.com</a>
Loletha Washington (Birmingham), Legal Assistant .....	(205) 521-8716 .....	<a href="mailto:lwashington@bradley.com">lwashington@bradley.com</a>
Heather Howell Wright (Nashville), Attorney .....	(615) 252-2565 .....	<a href="mailto:hwright@bradley.com">hwright@bradley.com</a>

An electronic version of this newsletter, and of past editions, is available on our website. The electronic version contains hyperlinks to the case, statute, or administrative provision discussed.



### READER RESPONSES

If you have any comments or suggestions, please complete the appropriate part of this section of the *Construction & Procurement Law News* and return it to us by folding and stapling this page which is preaddressed.

Your Name:

- I would like to see articles on the following topics covered in future issues of the *Bradley Construction & Procurement Law News*:

---



---



---

- Please add the following to your mailing list:

---



---



---

- Correct my name and mailing address to:

---



---



---

- My e-mail address: \_\_\_\_\_

We are in the process of developing new seminar topics and would like to get input from you. What seminar topics would you be interested in?

---

If the seminars were available on-line, would you be interested in participating?  Yes  No

If you did not participate on-line would you want to receive the seminar in another format?  Video Tape  CD ROM

Comments:

---



---



---



---



---



---



---

**Bradley Arant Boult Cummings LLP**

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104

Terri Lawson  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104