

BROAD NATURE OF RELEASE RESERVATION LANGUAGE

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Readers of this blog are aware that signing a final or general release, without any reservation language, prevents the contractor from bringing the claim up again as a claim or in any litigation. But how specific must the reservation of rights be in order to submit a specific claim after the contractor signed the final release? A partial answer is found in *Alares Construction, Inc. v. Dept of Veterans Affairs*, CBCA 7597, March 3, 2023.

Alares had a contract with the agency to relocate the Intensive Care Unit at the Providence VA Medical Center. In an earlier appeal (CBCA 6149) Alares attempted to add a claim supplement containing new legal theories which had not received the contracting officer's final decision. However, the Board refused because it was a new claim. So Alares voluntarily dismissed its claim, and presented a new claim to the contracting officer, which was denied. Alares appealed to the Board.

The VA alleged the CBCA had no jurisdiction because the claim did not include a sum certain. The Board denied this motion because the claim contained an exhibit revising its claim to a definite sum certain (\$1,649,495.60).

Next, the VA asserted that Alares had signed a final release of claims, discharging the government from all liabilities under the contract except for 29 specified requests for equitable adjustment ("REAs"). Included within those 29 REAs was REA 20, extended general conditions, and this specific REA had been converted to the claim that is at issue in CBCA 6149 (folded into this appeal). The VA sought summary judgment.

The first version of REA 20 was submitted before the final release of claims, seeking money for government delay and differing site conditions. In signing its release, Alares included "broad language" that preserved its right for other performance costs, as follows:

In accordance with [certain Veterans Affairs Acquisition Regulation clauses] Alares Construction, Inc. reserves its rights to receive a bond premium adjustment at the time of final settlement under this contract for Alares Construction, Inc. and its subcontractor's increased Bond Premiums. Alares Construction, Inc. reserves its rights to additional costs for impact of this change *alone or in combination with other changes, on unchanged work; for additional time, due to impacts, if any, on the schedule and for time-related extended time of performance costs*; all of which will be evaluated separately.

The Board refused to grant summary judgment because "the broad nature of [the above] language presents some doubt as to the material fact of whether appellant's claim addendum [REA 20] is barred by the final release of claims.

Takeaway: If you want to reserve the right to submit future claims when you sign a final release (and a contractor has every right to do so), identify the claim with specificity, so there will be no

doubt when you submit it to the contracting officer later. Broad, nonspecific language will not be effective.

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