

# Undefinitized Contracts – *Turner Construction Co. v. Smithsonian Institution*

The Civilian Board of Contracts Appeals recently issued a decision in *Turner Construction Co. v. Smithsonian Institution*, addressing how a board should respond if the contracting parties cannot agree to a firm price for an undefinitized contract that a contractor fully performs, reports Lisa Markman for **Bradley Arant Boult Cummings LLP**.

The board is the federal administrative court tasked to resolve disputes between government contractors and federal civilian executive agencies, she explains.

“The case was unique because Turner and the Smithsonian were supposed to have negotiated a firm fixed price contract during the design phase of the contract, but the parties failed to do so,” Markman writes. “This failure meant that the Smithsonian could not rely on ‘many of the safeguards and defenses that would have been available to it under a firm fixed-price agreement,’ including the contract’s equitable adjustment clause. Instead, the CBCA agreed with Turner and concluded that Turner was entitled to recover in *quantum meruit*.”

**Read the article.**