

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Analytical Assessments Corporation) ASBCA Nos. 52393, 52394
)
Under Contract No. MDA903-84-C-0449)

APPEARANCE FOR THE APPELLANT: William P. Rudland, Esq.
Counsel-Government Contracts
Eaton Corporation

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
CPT Elizabeth G. Eberhart, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PEACOCK

These appeals involve a claim by Analytical Assessments Corporation (AAC or appellant) seeking reimbursement of costs and fees totaling \$365,891.23 under the referenced cost-plus-fixed-fee contract (ASBCA No. 52393) and a claim by the Government seeking to setoff \$220,199.00 against any amounts found due appellant (ASBCA No. 52394). The principal issues concern the adequacy of documentation supporting amounts provisionally paid by the Government to AAC. The appeals have been processed, without a hearing, pursuant to Board Rule 11. Both entitlement and quantum are before us.

FINDINGS OF FACT

1. The referenced contract is a cost-plus-fixed-fee contract awarded by the Defense Supply Service-Washington (DSSW or the Government) to AAC on 28 September 1984, for research services pertaining to the effects of pretreatment drugs (drugs intended to provide a measure of protection before high risk of exposure to a chemical nerve agent) on military performance. The contract was incrementally funded with an estimated total cost of \$3,836,777.00 and a fixed-fee of \$299,525.00 for a total estimated cost of \$4,136,302.00. (R4, tab 1) As finally increased by Modification No. P00008, the total estimated cost and fixed-fee were \$4,299,050.00 and \$335,582.00, respectively for a total estimated cost-plus-fixed-fee (CPFF) of \$4,634,632.00 (R4, tab 13).

2. The contract incorporated by reference the following relevant clauses: AUDIT-NEGOTIATION, FAR 52.215-02 (APR 1984); ALLOWABLE COST AND PAYMENT, FAR 52.216-07 (APR 1984); ADMINISTRATION OF COST ACCOUNTING STANDARDS, FAR

52.230-04 (APR 1984); and LIMITATION OF FUNDS, FAR 52.232-22 (APR 1984) (R4, tab 1).

3. On 3 February 1987, unilateral Modification No. P00008 was issued fully funding the contract and deleting the incremental funding provision. Additionally, it deleted the LIMITATION OF FUNDS clause and added the LIMITATION OF COST clause, FAR 52.232-20 (APR 1984).

4. The contract was completed and final acceptance occurred on 31 March 1988 (R4, tab 27).

5. On 18 December 1984, appellant became a wholly owned subsidiary of Eaton Corporation (Eaton). Appellant was disestablished at its California location in 1988. (R4, tabs 3, 26; ex. A-1)

6. Among the several subcontractors performing work under the contract were McFann Gray & Associates (McFann Gray or MGA) and Systems Development Corporation (SDC). The latter subcontractor was subsequently acquired by Unisys, which changed its name to Paramax. (Ex. A-1) This subcontract is referred to as the Paramax subcontract.

7. McFann Gray performed work under its subcontract from 1984 through 1986 (R4, tab 85). Appellant invoiced the Government by way of public vouchers for costs billed to it by McFann Gray and paid by appellant to McFann Gray (R4, tab 30). Costs billed by McFann Gray and invoiced by appellant for the years 1984 and 1985 are not in issue here. Only the costs billed by McFann Gray for services performed in 1986 are relevant.

8. MGA filed for Chapter 11 bankruptcy in 1985 and was adjudicated a bankrupt under Chapter 7 in 1989 (R4, tab 25).

9. The applicable version of the AUDIT-NEGOTIATION (APR 1984) clause (FAR 52.215-2) stated in part:

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain--and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable

times of the Contractor's plants, or parts of them, engaged in performing the contract.

....

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition--

....

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

10. Relevant portions of FAR Subpart 4.7, CONTRACTOR RECORDS RETENTION, in force at the time of award stated:

FAR 4.700 SCOPE OF SUBPART.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors."

....

FAR 4.703 POLICY.

(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 and 4.704, whichever of these periods expires first.

....

FAR 4.704 CALCULATION OF RETENTION PERIODS

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. . . .

....

FAR 4.705-1 FINANCIAL AND COST ACCOUNTING RECORDS

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

....

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related

documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

11. The contract required appellant to submit vouchers with supporting statements for review and provisional approval to the Defense Contract Audit Agency (DCAA) (R4, tab 1 ¶ G-2). Pursuant to vouchers 31 through 47, AAC billed the Government for 1986 MGA costs and fees totaling \$220,199. Of that total, AAC actually paid MGA \$211,213. The remainder of \$8,986 was withheld by AAC as retained fee. The Government paid to AAC the total amount of \$220,199 billed in vouchers 31 through 47 including MGA's unpaid retained fee. (R4, tabs 2, 30)

12. Vouchers 70 through 79 were the final vouchers submitted under the contract. They were submitted over the period 18 September 1987 to 5 April 1988. Initially, payment was withheld pending finalization of appellant's 1985, 1986, 1987 and 1988 overhead rates as well as certain subcontract overhead rates. (R4, tabs 20, 22, 23, 24, 25, 26, 54) Because the Government asserts in these appeals that AAC's prior requests for payment of claimed MGA costs for 1986 (vouchers 31 through 47) were not properly supported and documented (as discussed below), the Government claims that it is entitled to offset amounts owed pursuant to unpaid vouchers 70 through 79. Costs billed under vouchers 70 through 79 total \$231,647.94 (not including retained fee) (*id.*). At the time of payment of voucher 69, the retained fee was \$41,863 (R4, tab 2). On unpaid voucher 79, the retained fee amount was listed as \$49,582, *i.e.*, a \$7,728.50 difference or increase in the retained fee (R4, tab 54).^{*} A "close out" voucher 80, dated 14 June 1989, sought payment of a "fee balance" of \$50,337.30. The \$745.02 difference between the voucher 79 and voucher 80 unpaid retained fee is the additional amount required to pay AAC the contractual fixed fee of \$335,582. (R4, tabs 54, 83)

13. On 14 May 1990 DCAA conducted a final audit (the MGA audit report) of costs incurred by MGA for the period of 1 February 1986 to 31 January 1987, which had already been billed by appellant to the Government and provisionally paid. Neither the trustee nor MGA was able to provide any supporting documents for amounts paid by AAC to MGA in 1986. Therefore, DCAA questioned all such costs. The MGA audit report stated in part (R4, tab 21):

^{*} The Government objected to certain handwritten notes on R4, tab 54, *i.e.*, the voucher 79. We have disregarded the handwritten notes in relying on the document which is otherwise admissible.

1. Purpose and Scope of Audit

. . . [W]e attempted to audit McFann Gray & Associates (MGA)'s books and records and its 27 August 1987 proposal for the purposes of establishing the final audit determined indirect cost rate for 1 February 1986 through 31 January 1987, and of evaluating direct costs incurred under the government cost reimbursable subcontracts. We are unable to verify the amounts claimed as direct and indirect subcontract costs because MGA was unable or unwilling to provide adequate accounting records. On 23 January 1990 an auditor examined the records of MGA, held by G. H. Goldstick (GHG), Chief Executive Officer (see paragraph 2 below). GHG could not locate records necessary to perform the audit in accordance with generally accepted government auditing standards and FAR 15.805-5e. In addition, on 24 January 1990 we contacted Mr. Howard McFann who confirmed that all records had been sent to GHG. All the individuals and companies contacted were unable to locate or unwilling to provide the FY 1987 accounting records required for review.

2. Circumstances Affecting the Audit

MGA, formerly of Carmel, California, obtained protection from creditors under chapter 11 of the bankruptcy code in 1985. We have been advised by the GHG, that MGA filed for chapter 7 bankruptcy in September 1989. All the records were transferred to Bakersfield, California, in October 1988.

3. Summary of Audit Reports

a. Since neither MGA nor the bankruptcy trustee were able to provide any accounting records to support the claimed costs, we have questioned the [amount provisionally paid] in its entirety due to lack of records required by FAR. . . . Since neither MGA nor GHG were able to provide appropriate documentation, we recommend that Form's 1 be prepared against the respective prime contractors to recover the [amounts] billed under provisional billings. . . .

. . . .

b. We discussed factual matters pertinent to the audit with the individuals referenced in paragraph 1.a. GHG stated that when the records came to their office they stored them in a storage facility. No effort was expended to record the types of records received nor do they know with certainty that they have all MGA records.

14. MGA was scheduled to submit a number of monthly, quarterly, annual and other technical reports to AAC from September 1984 to September 1986 pursuant to its subcontract. The subcontract incorporated FAR 52.215-2, AUDIT-NEGOTIATION, by reference (R4, tab 88). Appellant has offered no proof of the details of MGA's accounting system, invoicing procedures, or any documentation prepared to substantiate the propriety of the amounts invoiced or the hours alleged to have been worked. There is no evidence pertaining to the allowability of MGA's indirect consultant or travel costs, or the propriety of its labor and indirect rates for 1986. There is no evidence that AAC ever audited, or otherwise confirmed the propriety of, amounts invoiced by MGA (R4, tab 61). No affidavits from any person involved in the performance of the contract or subcontract are in the record.

15. On 22 May 1992, DCAA issued a Form 1 "Notice of Contract Costs Suspended or Disapproved" (Form 1) incident *inter alia*, to its audit of MGA. The disapproved amount totaled \$220,199.00, *i.e.*, the total amount previously paid to AAC with respect to MGA as set forth in vouchers 31 through 47, *supra*. (R4, tab 66)

16. In audit reports issued between September 1989 and July 1990, DCAA accepted appellant's proposed indirect rates for 1984 through 1988 without exception (R4, tabs 20, 22, 23, 24). The direct cost allocation bases actually used by AAC in computing its indirect cost rates did not include subcontract costs, including MGA subcontract costs (R4, tabs 22, 23, 24, 25).

17. Following finalization of its indirect rates, the total cost claimed to have been incurred by AAC in performing the contract plus the fixed fee was \$4,742,233.65. That total included both: (1) the amounts paid by AAC to MGA during 1986 and retained fee owed MGA in the amount of \$8,986.00; and (2) the amount of \$231,648.24 previously withheld by the Government with respect to AAC vouchers 70 through 79. Because the total contract price (including fixed fee) was \$4,634,632.00, AAC determined that an overrun in the amount of \$107,601.65 existed. (R4, tab 86)

18. On 13 May 1993, the Administrative Contracting Officer (ACO), CPT Jennifer Mullins, wrote to Eaton requesting documentation establishing that MGA-related costs were incurred in direct support of the contract (R4, tab 29). On 13 June 1993, Eaton submitted to the ACO 18 1-page MGA invoices for 1986 totaling \$220,199.00 along with checks from AAC or Eaton to MGA totaling \$211,213.00 (*i.e.*, less the retained fee of

\$8,986.00). The MGA invoices provided summary totals for the alleged hours worked, hourly rates paid, travel costs, any consultant costs along with indirect cost (108%) and profit (8.5%) markups. With respect to the \$8,986.00 retained fee, Eaton stated, “Since McFann-Gray is no longer in business, I would assume that this retained fee will be deducted from whatever Eaton (AAC) is entitled to recover.” (R4, tab 30) No documentation supporting the amounts invoiced by MGA is in the record (see finding 14).

19. As of 11 December 1996, the MGA subcontract and other audit issues associated with the contract remained unresolved. On that date, DCAA issued a memorandum to the cognizant Corporate Administrative Contracting Officer (CACO), Mr. Robert Frieden, for Eaton. In the memorandum, DCAA again concluded that there was insufficient documentation to establish the allowability (including reasonableness and allocability) of MGA’s invoiced 1986 costs or to place reliance on MGA’s cost accounting system. DCAA recounted its efforts to uncover relevant documentation noting that the bankruptcy trustee stated that MGA’s records had been destroyed in October 1996. (R4, tab 33) In 1992, AAC unsuccessfully attempted to obtain supporting documentation from the bankruptcy trustee. The extent and reasons for failure of that attempt are unclear. (R4, tab 72). There is no evidence of any other: steps taken by either AAC or Eaton to monitor the bankruptcy proceeding, attempts to obtain or preserve the bankrupt’s records, or communications with the bankruptcy trustee.

20. The CACO, despite DCAA’s objections, “reinstated the McFann-Gray costs and asked the contractor to prepare an estimate of the total amount of money needed to reimburse all remaining parties and finally close out the contract” (R4, tab 37 at 2). On 11 April 1997, AAC submitted its “close out” estimate to the CACO. The estimate, totaling \$365,891.23, was comprised of the following five components:

| | |
|--|----------------------|
| Paramex Remaining Fee | \$ 11,503.01 |
| Paramex Overrun Costs | 18,048.08 |
| Analytical Assessments Remaining Fee | 50,337.30 |
| Unpaid Analytical Assessments Outstanding Invoices | 231,647.94 |
| Analytical Assessments Overrun Costs | 54,354.90 |
| Total | <u>\$ 365,891.23</u> |

(R4, tab 35)

21. At the CACO’s request, DCAA reviewed AAC’s “close out” cost estimate and in a memorandum to the CACO dated 24 June 1997, *inter alia*, restated its views that MGA’s 1986 costs were inadequately documented and could not be verified (R4, tab 36). With respect to the Paramax subcontract costs, DCAA noted that it no longer questioned that the costs were allocable to the contract and otherwise allowable but expressed no position on whether the contract ceiling should be adjusted to cover the overrun (R4, tab 37).

22. In a memorandum dated 15 August 1997, the CACO notified the ACO of his determination that the entire amount of AAC's "close out" cost estimate was "allowable and allocable" to the contract and forwarded the matter to the ACO "for your action" (R4, tab 38). The CACO stated that the "overruns are the result of the finalization of overhead rates, a condition for which the Government normally will provide additional funds" (*id.*). With regard to MGA's subcontract costs, the CACO determined that the \$220,199.00 was "allocable and allowable" in its entirety. The CACO reached this conclusion, in part as a matter of "equity," because MGA's subcontract costs for 1984 and 1985 had previously been audited and accepted by DCAA, the required work products had been delivered by MGA to AAC and there was "partial evidence" of cost incurrence, *i.e.*, the MGA invoices and the contractor's checks in payment thereof. (R4, tabs 37, 42)

23. On 29 October 1997, ACO Janet McCrone, requested that DSSW add current year funds in the amount of \$365,891.23 to reimburse AAC based on the CACO's determination of "entitlement." The request for funds was necessary because a unilateral modification had erroneously been issued in 1995 closing the contract and deobligating the remaining funds despite the unresolved cost issues. (R4, tab 39)

24. On 5 January 1998, a DSSW CO, Frances Meckel, rejected Ms. McCrone's request after consultation with her legal advisors and a senior DCAA auditor. Ms. Meckel emphasized specifically that the contractor had not complied with LOCC requirements with respect to the overruns totaling \$72,402.98 and failed to comply with FAR record-keeping requirements insofar as the MGA subcontract costs of \$220,199.00 were concerned. (R4, tab 40)

25. By letter dated 1 April 1999, a successor DSSW CO, Ms. Barbara McShea, offered a final payment amount of \$55,673.00 to appellant to close the contract. This amount consisted of three components: Paramax's remaining fee of \$11,503.00, an unquestioned portion of AAC's remaining fee which was asserted to be \$32,721.00, and the difference between the amount of AAC vouchers 70 through 79 (\$231,647.00) and the disputed MGA subcontract costs (\$220,199.00) of \$11,449.00. The CO rejected payment of the remainder (\$17,616.00) of the appellant's claimed \$50,337.00 fee because it represented 8% of the disputed MGA subcontract costs. Payment of overrun and MGA subcontract costs was denied. (R4, tab 80)

26. The appellant submitted its certified claim to Ms. McShea by letter dated 18 June 1999. The bases for the claim and its amount of \$365,891.23 were the same originally set forth in its "close out" estimate of 11 April 1997. (R4, tabs 45, 46)

27. In her final decision dated 16 September 1999, the CO denied AAC's claim in substantial part for reasons noted above and asserted a Government claim demanding payment of the difference between the amount of the Form 1 disallowance (\$220,199.00) related to the 1986 MGA subcontract and the amount of \$53,366.79 allowed in the final

decision. The CO's allowance of \$53,366.79 was subject to setoff against the Government claim and was comprised of the entire Paramax fee claim (\$11,503.01) and \$41,863.78 of AAC's fee claim that totaled \$50,337.30. The CO considered that the allowed portion of the AAC fee had been proven to have been retained by the Government. However, the CO rejected the remainder of the AAC fee claim based on an alleged lack of supporting documentation.

28. The difference of \$8,473.52 between the AAC fee allowed (\$41,863.78) by the CO and the amount claimed (\$50,337.30) is the sum of the unpaid fee listed for retention on vouchers 70 through 79 (\$7,728.50) and the remaining unpaid fixed fee amount due upon completion of the contract (\$745.02). The \$41,863.78 was the amount retained at the time of payment of voucher 69, *i.e.*, the final payment made by the Government prior to the advent of the disputes involved in this claim. Voucher 80 sought payment of the retained fee listed on voucher 79 (\$49,592.28) plus the remaining unpaid fee of \$745.02 bringing the total fee to the contractually-stated amount of \$335,582.00 (*see* finding 12). (R4, tabs 2, 37, 48, 49, 54, 83)

29. In a memorandum to the CO of 25 July 2000, DCAA determined that the costs claimed on vouchers \$231,647.94 were allowable and reimbursable but, after offsetting the Government claim of \$220,199.00, DCAA recommended that only the remaining \$11,448.94 should be paid. But for its claim, the Government does not dispute the reimbursability of vouchers 70 through 79 up to the amount of the contract ceiling. DCAA also concluded that the total retained fee amount of \$50,337.30 claimed by AAC had been withheld and was owed appellant. (Ex. G-1)

30. Appellant timely appealed the CO's final decision by letter dated 23 September 1999. The appellant's claim was docketed as ASBCA No. 52393 and the Government's claim asserted in the final decision was docketed as ASBCA No. 52394.

DECISION

These appeals involve AAC's claim for reimbursement of costs incurred and unpaid fees in the amount of \$365,891.23 (ASBCA No. 52393) as well as a Government claim (ASBCA No. 52394) for return of \$220,199.00 alleged to have been erroneously paid under the subject CFFF contract. Because the Government claim is the focus of the primary dispute between the parties, we address it first.

ASBCA No. 52394

The Government contends that its provisional payments of vouchers 41 through 69 reimbursed AAC for claimed 1986 MGA subcontract costs that were not adequately documented and supported in compliance with FAR record keeping requirements. The appellant does not argue that it has complied with applicable FAR requirements for the

preservation of cost-related records. Instead, it relies primarily on the CACO's "equitable" determination that there was "partial evidence" sufficient to support payment of the costs.

We have detailed the lack of evidence substantiating the 1986 amounts invoiced by MGA and paid by AAC (*see* findings 13, 14). MGA's invoices merely summarize conclusory totals for the cost categories billed without shedding light on how those totals were derived. AAC audited none of the invoices and there is no evidence that would permit us to place reliance on the accuracy and efficacy of MGA's accounting system. In short, there are no probative MGA cost records supporting AAC's payments and there are no affidavits in this Rule 11 proceeding from any employee of either MGA or AAC involved in the performance of the contract/subcontract that might lend credence to AAC's contentions. We are unable to determine the amount, much less the allowability, of costs actually incurred by MGA in performance of the subcontract during 1986. The appellant asks us to infer that the amounts it paid were allowable and properly reimbursable based on the "partial evidence" noted by the CACO, *i.e.*, MGA's 1984-1985 costs that were not questioned by the Government, the fact that MGA completed studies that were delivered to AAC and the actual payments of the invoiced amounts by AAC to MGA. To grant recovery based on this limited "evidence" would nullify the duty of the appellant and MGA to adhere to the pertinent FAR record keeping provisions.

We also question the general "equity" of granting relief here. It was the appellant's obligation to retain adequate supporting records for the specified periods that established the recoverability of the vouchered costs. *JANA, Inc. v. United States*, 936 F.2d 1265, 1268 (Fed. Cir. 1991), *cert. denied*, 502 U.S. 1030 (1992). After completion of the contract and the closing of its California office in 1988, there is no evidence of any continuing involvement of AAC personnel knowledgeable about the performance of this contract despite the pendency of audit and contract close out actions. Although appellant communicated with the bankruptcy trustee in 1992, the extent and reasons for failure of that attempt to obtain supporting records have not been clarified. Relevant DCAA audit activities did not commence until 1990, *i.e.*, well after the initial bankruptcy filing in 1985 and after MGA was adjudicated a bankrupt under Chapter 7 in 1989. There has also been no attempt by AAC to establish the reasonableness of the level of effort and hours required to produce the subcontracted studies. The fact that one of the several COs involved in the administration of the contract also disregarded DCAA's recommendations and apparently approved the CACO's recommendations to seek full funding of the amounts claimed by the appellant is also not persuasive. These determinations were considered and rejected by two other DSSW COs with the authority to finally decide the issues involved.

This appeal is denied. The Government is entitled to recover the amount claimed of \$220,199.00.

ASBCA No. 52393

As a result of our above decision in the companion case, many of the issues in this appeal are now moot. The final decision substantially denied payment of the appellant's claim on three grounds. First, the Government offset \$220,199.00 of the \$231,647.94 invoiced on vouchers 70 through 79 against the Government's claim related to the undocumented MGA costs provisionally paid by the Government. We have found the Government entitled to recover the full amount claimed in ASBCA No. 52394. However, the Government does not otherwise contest the allowability or reimbursability of the costs invoiced. Accordingly, the appellant is entitled to recover the difference between the amount invoiced and the Government claim, *i.e.*, \$11,448.94.

The second ground advanced for reduction of the appellant's claim is an alleged cost overrun of \$72,402.98 that the Government asserts is not payable because AAC failed to give requisite notice under the Limitation of Cost clause. However, the Government's contentions are premised on inclusion of the disputed MGA subcontract costs in the appellant's cost total. Because we have concluded that the 1986 MGA subcontract costs are not recoverable, they must be excluded from the total cost computation. Once the MGA amounts of \$220,199.00 are subtracted, the contract was not in an overrun status and the \$72,402.98 is properly payable. Since the allocation bases actually used by AAC to compute its indirect rates did not include subcontract costs, AAC's indirect costs did not increase. We need not address the parties' arguments regarding the failure to provide notice inasmuch as no overrun exists.

The third matter in dispute involves the fixed fees payable. In her final decision, the CO awarded the appellant the full claimed amount of Paramax's remaining subcontract fee of \$11,503.01. She also found the appellant entitled to recover \$41,863.78 of its claimed remaining fixed fee of \$50,337.30. The CO denied payment of the \$8,473.52 difference apparently on the basis that AAC had failed adequately to substantiate the amount of the fee that had not yet been paid. As detailed in our findings, we have tracked the amount of the retained fee through voucher 80. The \$41,863.78 awarded by the CO reflects the amount of fee retainage only through voucher 69. Vouchers 70 through 80 substantiate that the additional \$8,473.52 remained unpaid. Following issuance of the final decision, DCAA confirmed that AAC was entitled to payment of that amount.

We conclude that the appellant is entitled to recover the full amount of \$365,891.23 claimed subject to the Government's setoff of \$220,199.00.

The appeal is sustained.

CONCLUSION

ASBCA No. 52393 is sustained. ASBCA No. 52394 is denied. The appellant is entitled to recover \$145,692.23 plus interest in accordance with the Contract Disputes Act.

Dated: 25 June 2001

ROBERT T. PEACOCK
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 52393 and 52394, Appeals of Analytical Assessments Corporation, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals