

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
)  
United Technologies Corporation, )  
Pratt & Whitney Division ) ASBCA Nos. 50465 50518  
) 51410 51445  
Under Contract No. F33657-84-C-2014 )

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OPINION BY ADMINISTRATIVE JUDGE DELMAN  
ON CROSS MOTIONS FOR SUMMARY JUDGMENT

United Technologies Corporation, Pratt and Whitney Division (appellant) and the Department of the Air Force (Government) have filed cross motions for summary judgment on the issue of reliance as it pertains to the Government's claim for defective pricing under ASBCA No. 51410. Appellant contends that the undisputed facts compel

the conclusion that the Government did not rely on appellant's cost or pricing data, and that appellant is entitled to judgment as a matter of law. The Government contends that the undisputed facts compel the conclusion that the Government did, in fact, rely on appellant's cost or pricing data and that the Government is entitled to judgment on this issue as a matter of law. In lengthy submissions to this Board, the parties have presented argument and evidence in the nature of project records, deposition testimony and affidavits in support of their respective positions.

The governing law to be applied under these circumstances is familiar:

Summary judgment is properly granted only where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Mingus Constructors, Inc. v. United States* [33 CCF ¶ 75,126], 812 F.2d 1387, 1390-92 (Fed. Cir. 1987). The burden is on the movant to establish the absence of any genuine issues of material fact. A material fact is one which will make a difference in the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Factual inferences are to be drawn in favor of the party opposing summary judgment *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Alvarez & Associates Construction Co., Inc.*, ASBCA No. 49341, 96-2 BCA ¶ 28,476. Our task is not to evaluate or weigh competing evidence but only to determine whether a genuine disputed issue of material fact exists that is suitable for resolution at trial. *Alvarez, supra*.

*Grumman Aerospace Corporation*, ASBCA Nos. 46834, 48006, 98-1 BCA ¶ 29,591 at 146,707.

Applying these principles here, we would be hard pressed to imagine a more hotly contested fact issue in the appeal than the one presented by the parties' motions. Clearly, the parties dispute the extent to which, if at all, the Government relied on appellant's cost or pricing data. Clearly, there is competing evidence on this issue. While each party predictably disputes the evidence of the other, our evaluation of the evidence must await the trial.

Neither party has persuaded us that summary judgment is appropriate under the circumstances. The cross motions are denied.

Dated: 30 June 2000

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JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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PAUL WILLIAMS  
Administrative Judge  
Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Acting 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. 50465, 50518, 51410 and 51445, Appeals of United Technologies Corporation, Pratt & Whitney Division, rendered in conformance with the Board's Charter.

Dated:

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