

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
DynCorp) ASBCA No. 49714
)
Under Contract No. DAKF04-91-C-0072)

APPEARANCES FOR THE APPELLANT: Richard O. Duvall, Esq.
Craig A. Holman, Esq.
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Washington, DC

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
Craig S. Clarke, Esq.
Deputy Chief Trial Attorney
LTC Richard B. O'Keeffe, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE DICUS
ON GOVERNMENT'S MOTION FOR RELIEF FROM JUDGMENT
UNDER FED. R. CIV. P. 60(b)

Our decision in *DynCorp*, ASBCA No. 49714, 00-2 BCA ¶ 30,986, *recon. denied* 00-2 BCA ¶ 31,087 (*DynCorp*), found appellant entitled under the Major Fraud Act of 1988, Pub L. No. 100-700 (“the Fraud Act”), to recover costs incurred as the result of Government actions in investigating allegations of wrongdoing against appellant (“proceeding costs”). We remanded the appeal for determination of quantum. The Government in its motion asserts for the first time that the appeal should have been denied because the Fraud Act, in making proceeding costs recoverable, amended 10 U.S.C.A. § 2324 which (according to the Government) applies only to indirect costs and appellant claims the proceeding costs as direct costs. Appellant argues that the motion is both untimely and unmeritorious.

While our Rules do not explicitly provide for the relief requested, we have considered such motions and applied FED. R. CIV. P. 60(b) in doing so. *Larry D. Paine*, ASBCA No. 41273, 93-3 BCA ¶ 26,161. We have fully considered the Government’s motion and affirm our opinion. In reviewing the Fraud Act, we find explicit terms which can only be reasonably interpreted as allowing recovery of proceeding costs as direct costs under the contract. Section 8 of the Fraud Act, LIMITATIONS ON ALLOWABILITY OF COSTS INCURRED BY CONTRACTORS IN CERTAIN PROCEEDINGS, amended 10 U.S.C.A § 2324(k) to include the following:

“(5)(A) Except as provided in paragraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).[”]

....

“(2) In subsection (k):

....

“(B)The term ‘costs’, with respect to a proceeding—
“(i) means all costs incurred by a contractor[”]

Direct costs are “[c]osts identified specifically with the contract . . . [which] are to be charged directly to the contract.” FAR 31.202(a). Pursuant to the Fraud Act, all allowable proceeding costs incurred under a covered contract are to be reimbursed under that single contract. Accordingly, we conclude the Congressional intent was to treat proceeding costs as direct costs. As the Congressional intent is discernible from the words of the statute, “that is the end of the matter.” *Chevron U.S.A. Inc., v. Natural Resources Defense Counsel, Inc., et al.*, 467 U.S. 837, 842. The Government’s motion is denied.

Dated: 21 May 2001

CARROLL C. DICUS, JR.
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 No. 49714, Appeal of DynCorp, rendered in conformance with the Board's Charter.

Dated:

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