

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
DynCorp) ASBCA No. 53098
)
Under Contract No. DAKF04-91-C-0072)

APPEARANCES FOR THE APPELLANT: Richard O. Duvall, Esq.
Craig A. Holman, Esq.
Holland & Knight LLP
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, Jr., JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE DICUS

This dispute evolved from a contracting officer's decision denying appellant's claim for attorneys' fees and related costs (proceeding costs) under the Major Fraud Act of 1988 and implementing regulations. An appeal was filed and docketed as ASBCA No. 49714. In a 21 June 2000 decision, 00-2 BCA ¶ 30,986, *aff'd on reconsid.*, 00-2 BCA ¶ 31,087, we sustained the appeal on entitlement only, and expressly refrained from ruling on the issues of allocability and reasonableness of the proceeding costs. Those issues were reserved for the quantum phase, which is embodied in the above-captioned appeal, ASBCA No. 53098.

The Army thereafter filed a motion pursuant to FED. R. CIV. P. 60(b), averring for the first time that if, *arguendo*, the proceeding costs were recoverable at all under the Major Fraud Act's amendment to 10 U.S.C.A. § 2324, that statute addresses only indirect costs, and appellant sought to recover the proceeding costs here as direct costs. We denied the motion. We interpreted the Major Fraud Act as not limiting recovery to indirect costs. *DynCorp*, ASBCA No. 49714, 01-2 BCA ¶ 31,433.

The parties were unable to negotiate quantum and this appeal ensued. The parties believed, however, that if the Board would resolve the issue of allocability, they could agree on the issue of reasonableness. Cross motions for summary judgment were filed and the issue of allocability was resolved in appellant's favor in our opinion of 19 June 2001. *DynCorp*, ASBCA No. 53098, 01-2 BCA ¶ 31,476.

By Government's Stipulation of Reasonable Attorney's Fees, dated 6 May 2002, the Army stipulated as a fact that a reasonable total amount for proceeding costs is \$732,062, and that, pursuant to the 80 percent limitation in FAR 31.205-47(e)(3), the Army's liability is \$585,650 plus Contract Disputes Act interest commencing on 23 January 1996. This was accepted by appellant in a 13 May 2002 telephone conference (*see* Board Telephone Conference Memorandum and Order dated 13 May 2002; appellant's 14 May 2002 letter).

Accordingly, the appeal is sustained in the amount of \$585,650 plus Contract Disputes Act interest on that amount to run from 23 January 1996 until payment.

Dated: 15 May 2002

CARROLL C. DICUS, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

PAUL WILLIAMS
Administrative Judge
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. 53098, Appeal of DynCorp, rendered in conformance with the Board's Charter.

Dated:

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