

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Lockheed Martin Corporation) ASBCA No. 53834
)
Under Contract No. F19628-86-C-0174)

APPEARANCES FOR THE APPELLANT: Frederic M. Levy, Esq.
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Washington, DC

APPEARANCES FOR THE GOVERNMENT: COL Anthony P. Dattilo, USAF
Chief Trial Attorney
Diana S. Dickinson, Esq.
Chief, Eastern Trial Division

OPINION BY ADMINISTRATIVE JUDGE JAMES
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

In deciding respondent's defective pricing claims in *Martin Marietta Corp.*, ASBCA No. 48223, 98-1 BCA ¶ 29,592, *aff'd on recon.*, 98-2 BCA ¶ 29,741, we denied the appeal on the undisclosed facilities capital charge issue, sustained the appeal on the actual G&A rate issue, and remanded the appeal to the parties to resolve quantum. In January 2002 respondent refunded \$187,558 to appellant on the G&A rate issue, but the parties failed to agree on "off-set" and "interest" on the \$187,558 refund. At appellant's request, we docketed ASBCA No. 53834 to decide quantum (re-captioned to reflect the contract's novation to Lockheed Martin Corporation). Thereafter, the parties settled the off-set issue and cross-moved for summary judgment on the remaining issue of interest.

The Board's 11 June 2003 letter to the parties stated that appellant appeared not to have submitted any claim to recover any part of the \$1,259,847 it paid to the Government in December 1994 shortly after it received the contracting officer's (CO) final decision demanding payment of such amount, or for interest on the \$187,558 refunded in January 2002, questioned whether the Board has Contract Disputes Act (CDA) jurisdiction to decide this interest issue, and requested further briefs thereon. The parties submitted briefs dated 25 June 2003 on this jurisdictional question.

Respondent argues that appellant submitted no claim for remission of any part of the \$1,259,847 appellant paid to the Government in December 1994, thus, the Board has no CDA jurisdiction to decide the issue of interest on the amount refunded in January 2002. Appellant argues that the Board has jurisdiction over the interest issue based upon its

undeniable CDA jurisdiction over the September 1994 CO's final decision in ASBCA Nos. 48223 and 53834, and its "claim to interest" is based not on the CDA, but rather on the Debt Collection Act and FAR § 32.613(l), which basis of jurisdiction the Board recognized in *Hettich and Co., GmbH*, ASBCA No. 35239, 91-2 BCA ¶ 23,927.

DECISION

As to appellant's first asserted basis for jurisdiction, the appeal of the CO's September 1994 decision gave the Board CDA jurisdiction of the CO's defective pricing claim in ASBCA No. 48223. However, no contractor claim was comprehended in that appeal. Therefore, that ground is unavailing with respect to appellant's alleged right to interest on the refund.

As to its second ground, appellant points to no provision in the Debt Collection Act of 1988 authorizing the ASBCA, apart from its CDA jurisdiction, to decide disputes over payment of interest on federal agency debts, nor is any such provision apparent to the Board. The sole provision of the Debt Collection Act addressing interest, 31 U.S.C. § 3717, prescribes payment of interest to the Government. It does not mention Government payment of interest, and does not confer jurisdiction on any contract appeals board to decide issues of payment of such interest. To be sure, ASBCA decisions have ruled on Debt Collection Act issues, but always in the context of an appeal or appeals based on our CDA jurisdiction, *see, e.g., Snowbird Industries, Inc.*, ASBCA No. 33171, 87-2 BCA ¶ 19,862 at 100,475, or upon our pre-CDA Disputes clause jurisdiction, *see, e.g., DMJM/Norman Engineering Co.*, ASBCA No. 28154, 84-1 BCA ¶ 17,226 at 85,770-72.

In *Hettich and Co., GmbH*, ASBCA No. 35239, 91-2 BCA ¶ 23,927, *aff'd on recon.*, 92-2 BCA ¶ 24,972, the CO withheld DM 730,743 from payments under two 1977 contracts. We held that the ASPR 7-104.82 PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS (1976 JUL) clause in those 1977 contracts entitled the contractor to interest on the invalid withholding. In *dicta* (in which the Board's majority declined to join) the decision's author cited, *inter alia*, the April 1984 FAR 32.613(l) provision to support such interest. 91-2 BCA at 119,863-64. Even if the relied upon language was the Board's majority opinion, such *dicta* do not assist appellant in the case at bar, because *Hettich* was a pre-CDA appeal in which interest was allowed by virtue of a contract interest clause not included in contract F19628-86-C-0174. We are not convinced that FAR 32.613(l) confers jurisdiction on the ASBCA, apart from its CDA jurisdiction, to decide a claim for interest on a Government refund to a contractor.

We deny the motions for lack of jurisdiction to decide the interest issue. We express no opinion on the merits of any claim for interest appellant may file.

Dated: 11 July 2003

DAVID W. JAMES, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

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. 53834, Appeal of Lockheed Martin Corporation, rendered in conformance with the Board's Charter.

Dated:

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