

ARMED SERVICES BOARD OF CONTRACT APPEALS

Application Under the Equal Access)
to Justice Act of --)
TranLogistics LLC) ASBCA 61574
Under Contract No. M27100-17-P-6012)

APPEARANCE FOR THE APPELLANT: Hopewell H. Darneille III. Esq.
Jackson Kelly PLLC
Washington, DC

APPEARANCES FOR THE GOVERNMENT: Craig D. Jensen, Esq.
Navy Chief Trial Attorney
Maj John E. Buis, USMC
Associate Counsel
Eastern Area Counsel Office
Camp Lejeune, NC

OPINION BY ADMINISTRATIVE JUDGE KINNER
ON APPELLANT'S APPLICATION UNDER THE
EQUAL ACCESS TO JUSTICE ACT

TranLogistics LLC timely applied for reimbursement of legal fees and the CPA expense it incurred in prosecution of its Board Rule 12.2 appeal pursuant to the Equal Access to Justice Act (EAJA) and the Rules of this Board (5 U.S.C. § 504; ASBCA Rules Addendum I). The Contract Disputes Act, 41 U.S.C. § 7106(b)(4)-(5), as implemented by Board Rule 12.2, provides a decision under 12.2 shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside. The government has not responded to the application. In support of its application, TranLogistics LLC has submitted declarations by its president and its CPA to demonstrate that it had a net worth of less than \$7 million and less than 500 employees at the time of its appeal (5 U.S.C. § 504(a)(4); Addendum I(e); Tran decl. ¶ 17, ex. 7). It is therefore an eligible party to recover fees pursuant to EAJA. *Kostmayer Construction, LLC*, ASBCA No. 55053, 09-2 BCA ¶ 34,302 at 169,443. Also as required by EAJA, TranLogistics LLC is the prevailing party in this appeal. On reconsideration, TranLogistics LLC was awarded the full amount of its appeal. *States Roofing Corporation*, ASBCA No. 55505, 11-1 BCA ¶ 34,668 at 170,777.

TranLogistics LLC must also establish that the position of the government was not substantially justified (Addendum I(d), (m)(1)). My initial decision found that the government participated in formulating the custom documents necessary for crossing

borders to complete the transportation required by the contract. The government denied TranLogistics LLC's claim for the additional costs it incurred while the government delayed delivery of critical documentation and precluded the company from completing performance. The government's defense was not substantially justified within the meaning of EAJA. *States Roofing*, 11-1 BCA ¶ 34,668 at 170,778.

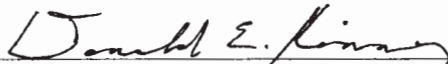
TranLogistics LLC has demonstrated that it paid the legal fees for which it requests reimbursement (Tran decl. ¶ 14, ex. 5; Addendum I(e)). Its application requests \$7,343 for the fixed fee TranLogistics LLC agreed upon with its counsel (app. application at 10-11; Tran decl., ex. 2). That amount reflects legal fees reasonably incurred prosecuting this appeal (Tran decl., ex. 6; Addendum I(e)).

The amounts incurred for preparation of TranLogistics LLC's EAJA application are also recoverable. *Kostmayer Construction*, 09-2 BCA ¶ 34,302 at 169,445. TranLogistics LLC seeks its attorney's \$4,987.50 EAJA application preparation fee and a \$500 flat charge for the CPA who prepared the company financial statement (Tran decl., exs. 6, 8-9). That legal fee is billed at the statutory rate of \$125, and supported by contemporaneous billing details (Tran decl., ¶ 14, ex. 5). The work product of the CPA is reflected in his declaration, which explains that TranLogistics LLC does not obtain annual financial statements (Alonso decl. ¶ 5). Accordingly, he prepared a compilation balance sheet as well as additional documentation to support the EAJA application (Alonso decl. ¶¶ 6, 8, ex. 1). Based on its application and supporting documentation, TranLogistics LLC recovers this reasonable fee and expense.

CONCLUSION

TranLogistics LLC is awarded \$12,830.50 for reasonable expenses and legal fees. Appellant elected to have its appeal proceed pursuant to Board Rule 12.2. Pursuant to that rule, the decision was rendered for the Board by a single Administrative Judge, as was the decision on its motion for reconsideration. Board Rule 12.2(c). Pursuant to paragraph (n) of Addendum I to the Board's Rules, this decision is rendered by the same Administrative Judge. *Id.*

Dated: March 25, 2019


DONALD E. KINNER
Administrative Judge
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 on an application for fees and other expenses incurred in connection with ASBCA No. 61574, Appeal of TranLogistics LLC, rendered in accordance with 5 U.S.C. § 504.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals