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ASBCA Shoots Down DCAA Overreach on Responsibility to Manage Subcontractors

By Luke Meier on January 17, 2017

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A prime contractor is responsible for managing its subcontractors, but what exactly does that require? In a recent decision, the answer of the Armed Services Board of Contract Appeals was: not nearly as much as DCAA claimed.

In Lockheed Martin Integrated Sys., Inc., ASBCA Nos. 59508, 59509, the Board ruled on a Government claim seeking more than \$100 million from LMIS for allegedly breaching an obligation to manage subcontracts. In DCAA's reading, this obligation was extensive and required a number of concrete actions by the prime contractor.

After auditing three LMIS contracts, DCAA questioned \$103 million in subcontract costs. DCAA claimed that, for the costs to be allowable, LMIS had to provide documents showing it had: (1) reviewed subcontractor resumes to confirm personnel qualifications; (2) reviewed subcontractor timesheets to confirm the accuracy of invoiced hours; and (3) tried to obtain incurred cost submissions from its subcontractors, contacting "the Government" for "assistance" if the subcontractors refused. Attached Decision at 10. DCAA claimed it could find no subcontract costs allowable "[w]ithout an incurred cost submission from the subcontractor," which was the prime contractor's responsibility to obtain. *Id.* at 11.

LMIS maintained that it had flowed down all necessary requirements to its subcontractors, had collected all appropriate (nonproprietary) information from them, and had followed standard protocols to vet subcontractor costs before submitting them for reimbursement. The contracting officer nevertheless adopted DCAA's reasoning in a final decision demanding payment from LMIS for the \$103 million in questioned subcontractor costs.

LMIS appealed to the ASBCA, and the Board then ordered the Government to file the complaint. In response, LMIS moved to dismiss. In a decisive win for contractors, the Board expressly rejected the Government's theory. While acknowledging a general responsibility to manage subcontractors, the Board found there was no statutory or contractual authority that required "the particular duties alleged by the government." *Id.* at 26. That contention, the Board concluded, was based on "nothing more than a plainly invalid legal theory." *Id.* at 27.

Thankfully, the Board has rejected DCAA's aggressive theories that would impose onerous obligations on both prime contractors and their subcontractors. While the exact extent of prime contractors' management responsibility remains unclear, contractors facing adverse audit findings are now well-armed to push back.

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