[Cite as *Dynamics Research Corp. v. Ohio Dept. of Job & Family Servs.*, 2014-Ohio-5938.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DYNAMICS RESEARCH CORPORATION

Plaintiff/Counter Defendant

v.

THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.

Defendants/Counter Plaintiffs

Case No. 2010-06231

Judge Patrick M. McGrath

JUDGMENT ENTRY

{¶1} Plaintiff/counter defendant, Dynamics Research Corporation (DRC), brings this action for breach of contract against defendants/counter plaintiffs, Ohio Department of Job and Family Services (ODJFS) and the Ohio Department of Administrative Services (DAS)(collectively, the state). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability. Following a trial on the issue of liability, the court entered judgment in favor of DRC as to both its claim and the state's counterclaim. Subsequently, on December 7, 2012, the court entered judgment in favor of DRC in the amount of $282,595.22. Both parties appealed to the Tenth District Court of Appeals.

{¶2} Many of the relevant facts related to this litigation are set forth in the opinion of the Tenth District Court of Appeals in *Dynamics Research Corp. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 13AP-22, 2014-Ohio-516 as follows:

{¶3} "The federal government provides states funding to plan, design, develop, and implement a Statewide Automated Child Welfare Information System ('SACWIS'). 42 U.S.C. 674(a)(3)(C). To qualify for the funding, a state must achieve approval of an advanced planning document ('APD'). The APD 'must provide for a design which, when implemented, will produce a comprehensive system, which is effective and

efficient, to improve the program management and administration of the plans for titles IV-B [child welfare services] and IV-E [foster care and adoption assistance] as provided under [45 C.F.R. 1355.53].' 45 C.F.R. 1355.53(a). The Administration for Children and Families, part of the Department of Health and Human Services, assesses whether a state's SACWIS complies with the APD and federal requirements. 45 C.F.R. 1355.55. Failure to comply may result in the recoupment of federal funds. 45 C.F.R. 1355.56(b)(4).

{¶4} "The state of Ohio contracted with DRC to develop and implement a SACWIS. The contract required DRC to perform 12 tasks in order to complete the project. Each task included the production of specified deliverables." *Id*. at ¶ 2-3.

{¶5} "The contract between Ohio and DRC was for a fixed price, portions of which were payable when DRC reached specified 'milestones.' DRC attained each milestone by completing work associated with the milestone. The amount of payment due at each milestone was a percentage of the total contract price that bore no relation to the cost of the work performed to complete the work tied to the milestone. The state structured the milestone payment schedule so that payment was backloaded, which meant that the state deferred paying a large portion [of] the contract price until the end stages of the contract period. Also, the state designated ten percent of the contract price as a holdback, which would be paid upon completion of Task 12.

{¶6} "DRC's right to payment was 'contingent on the complete and satisfactory performance of * * * all relevant parts of the Project tied to the applicable milestone.' Plaintiff's exhibit No. 1, at 76. DRC achieved such performance by submitting for the state's review all the deliverables associated with a particular task. If the state accepted a deliverable, it would issue a letter of acceptance to DRC. Upon receipt of acceptance letters for all the deliverables associated with a task, DRC was permitted to submit an invoice for the milestone payment tied to that task.

{¶7} "DRC started working on the SACWIS project in May 2004. Over the next four and one-half years, DRC submitted to the state all deliverables associated with Task 1 through 10. The state accepted all of those deliverables. As permitted by the contract, DRC delivered to the state invoices for work performed to complete tasks one through ten. The state paid those invoices.

{¶8} "On January 28, 2009, the state informed DRC that it was terminating the contract effective February 27, 2009. The state terminated the contract pursuant to the provision of the contract that permitted the state to 'terminate * * * for its convenience and without cause.' Plaintiff's exhibit No. 1, at 81.

{¶9} "The contract specified how compensation to DRC would be determined if the state terminated for convenience. According to the contract:

> a. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any work on the Project that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined to be owing to the Contractor by the State. The State will make that determination based on the lesser of the percentage of the Project completed or the hours of work performed in relation to the estimated total hours required to perform the entire applicable unit(s) of Work.

Plaintiff's exhibit No. 1, at 82. Therefore, upon termination for convenience, the amount of compensation due to DRC would be the contract price multiplied by the lesser of 'the percentage of the Project completed' or the percentage calculated by determining 'the hours of work performed in relation to the estimated hours required to perform the entire applicable unit(s) of Work.'

{¶10} "The contract required DRC to prepare and deliver to the state a termination report upon receipt of the notice of termination. That report had to 'detail the work completed at the date of termination [and] the percentage of the Project's completion.' Plaintiff's exhibit No. 1, at 81.

{¶11} "In its termination report, DRC stated that it had completed and delivered to the state all contract deliverables. Additionally, DRC informed the state that it had completed all tasks, except for Task 12, which required DRC to provide post-implementation support. Before the termination for convenience, the project was to terminate on April 10, 2009. As reported by DRC, '[t]he remaining effort that was to have been performed under Task 12 during the period February 28, 2009 through April 10, 2009 consist[ed] of level-of-effort support of 11 staff personnel (2,774 hours) available to the State to perform state-identified, post-implementation Task 12 work activities.' Plaintiff's exhibit No. 19, at 5.

{¶12} "In conformance with the parties' contract, the termination report also included calculations of the percentage of the project's completion. DRC determined the 'percentage of Project completed' by subtracting the hours of unperformed work (2,774 hours) from the number of hours that DRC had estimated that it would require to complete the entire project (585,841 hours). DRC then divided the result (583,067 hours) by the number of estimated hours to complete the project (585,841 hours) to conclude that it had completed 99.5 percent of the project. In other words, (585,841 hours – 2,774 hours) / 585,841 hours = 99.5 percentage of project complete.[1]" *Id*. at ¶ 8-15.

{¶13} "Ultimately, DRC invoiced the state for $1,122,404.46. DRC computed this amount by multiplying the fixed price of the contract ($52,602,471) by 99.53

[1]If this result is rounded to two numbers after the decimal point, instead of one, the result is 99.53 percent.

percent, the 'percentage of the Project completed' as calculated in the termination report. The result was $52,355,239.39. Since the state had already paid DRC $51,232,834.93, DRC requested payment in the amount of $1,122,404.46 ($52,355,239.39 - $51,232,834.93 = $1,122,404.46)." *Id*. at ¶ 17.

{¶14} "Here, the parties agree that the 'percentage of the Project completed' renders a lesser amount of compensation than the calculation of 'hours of work performed in relation to estimated total hours.' * * * Thus, however it is determined, the 'percentage of the Project completed' multiplied by the contract price results in the appropriate amount of compensation." *Id*. at ¶ 29.

{¶15} "Here, the parties' contract does not set forth any method for calculating the 'percentage of the Project completed.' The contract, therefore, contains an ambiguity regarding what method the parties should use." *Id*. at ¶ 42.

{¶16} "The conflict at the core of this case is how the 'percentage of the Project completed' should be measured. The parties each advocate for different computation methods. The state asserts the trial court should have determined the 'percentage of the Project completed' by looking at the value of the work completed prior to DRC's termination. Under the state's preferred calculation, the 'percentage of the Project completed' would equal the value of the work completed divided by the contract price. DRC contends that the trial court should have computed the 'percentage of the Project completed' using the method DRC set forth in the termination report. Under that method, DRC subtracted the number of hours scheduled to be worked, but not yet worked, from the total estimated number of hours for the project, and divided the result by the total estimated number of hours." *Id*. at ¶ 30.

{¶17} Regarding the state's proposed method of calculating the "percentage of the Project completed," the court of appeals stated that "[n]othing in the contractual language restricts the calculation of the 'percentage of the Project completed' to the value method defendants champion." *Id*. at ¶ 44. Indeed, the court of appeals

determined that "[u]pon termination for convenience, DRC became 'entitled to compensation for *any* work on the Project that [DRC] ha[d] performed before the termination'" and that "the trial court's failure to compute DRC's compensation pursuant to the 'percentage of the Project completed' constitutes error prejudicial to DRC." *Id*. at ¶ 34, 39.

{¶18} On May 21, 2014, the court conducted a case management conference with the parties. The parties agreed that there was no need for additional evidence in this case; however, the parties disagreed whether additional briefing was necessary. The court determined that no additional briefing was necessary inasmuch as the case was remanded solely for a "recalculation of damages." *Id*. at ¶ 45.

{¶19} In accordance with the decision of the court of appeals, the only reasonable conclusion to draw is that DRC completed 99.53 percent of the contract prior to termination. The contract is for a fixed price of $52,602,471. The percentage of the project completed (99.53 percent) multiplied by the fixed contract price ($52,602,471), results in $52,355,239.39. The state has already paid DRC $51,232,834.93. Therefore, DRC is entitled to $1,122,404.46 ($52,355,239.39-$51,232,834.93=$1,122,404.46).

{¶20} DRC also asserts a claim for prejudgment interest pursuant to R.C. 1343.03(A). A government contractor's money becomes due and payable when the contractor substantially completes its work on the project. *Royal Electric Const. Corp. v. The Ohio State University*, 73 Ohio St.3d 110, 117 (1995). There is no dispute that DRC's termination was effective February 27, 2009 and that DRC submitted an invoice detailing its compensation prior to its termination. (DRC Exhibit 23.) Consequently, DRC is entitled to prejudgment interest on the award of damages from February 28, 2009, to the date of this court's judgment entry as follows:

a. 306 days (02/28/2009 to 12/31/2009) @ 5% of $1,122,404.46 =$ 47,048.73

b. 365 days (01/01/2010 to 12/31/2010) @ 4% of $1,122,404.46 =$ 44,896.18

c. 365 days (01/01/2011 to 12/31/2011) @ 4% of $1,122,404.46 =$ 44,896.18

d. 365 days (01/01/2012 to 12/31/2012) @ 3% of $1,122,404.46 =$ 33,672.13

e. 365 days (01/01/2013 to 12/31/2013) @ 3% of $1,122,404.46 =$ 33,672.13

f. 192 days (01/01/2014 to 07/11/2014) @ 3% of $1,122,404.46 =$ 17,712.46

g. Total Prejudgment Interest =$221,897.81

{¶21} Accordingly, judgment is rendered in favor of DRC in the amount of $1,344,327.27, which includes the filing fee. Court costs are assessed against defendants/counter plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH
Judge

cc:

Amy S. Brown
Randall W. Knutti
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

James J. Hughes III
100 South Third Street
Columbus, Ohio 43215-4291

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