

CLIENT ALERT

ASBCA Decision a Mixed Bag on Cost Allowability Issues

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In *Raytheon Co., ASBCA No. 57743, et al.*, the Board addressed penalties associated with various unallowable costs, finding that salaries of employees engaged in unallowable lobbying activities were “expressly unallowable” as “directly associated costs,” and subject to level 1 penalties, even though “directly associated costs” are, by definition, not expressly unallowable. The Board also found that costs that Raytheon had previously agreed to treat as unallowable, but erroneously included in incurred cost submissions, were not subject to level 1 penalties because they were not expressly unallowable (the Government apparently did not argue that such costs were subject to level 2 penalties). Finally, the Board held that testimony and other credible evidence can be used to demonstrate allowability of consultant costs in the absence of perfect documentation, and that a contractor must prove the CO’s failure to waive penalties for expressly unallowable costs is an arbitrary and capricious abuse of discretion. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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