

<b>MILLER AERO SERVICE, INC.,</b>	)	<b>AGBCA No. 2001-115-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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	)	
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	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

May 19, 2003

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.<sup>1</sup>**

**Opinion for the Board by Administrative Judge VERGILIO.** On December 21, 2000, the Board received this appeal filed by Miller Aero Service, Inc. (contractor) of Boise City, Oklahoma. The respondent is the U. S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) (Government). The dispute involves a contract, No. 53-6395-4-62, ute involves a contract, No. 53-6395-4-62, issued by APHIS, Animal Damage Control Program, in support of predator control activities within Texas. The modified contract required the contractor to provide a helicopter with or without a pilot, along with specified support. The helicopter crashed, when operated by a Government-furnished pilot.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended. Concluding that the contract required the Government- furnished pilot to possess the qualifications dictated in the contract, the Board granted-in-part a contractor motion for partial summary judgment and denied a Government

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<sup>1</sup> The panel has changed in this appeal from the time the Board decided cross-motions for summary judgment; a retirement has required the substitution of a panel member.

motion for partial summary judgment. Miller Aero Service, Inc., AGBCA No. 2001-115-1, 01-2 BCA ¶ 31,620. Liability under the contract remained an issue to be resolved.

The parties engaged in discovery, developing the record on the issues of entitlement and quantum. The parties opted to utilize an alternative dispute resolution (ADR) technique to resolve this appeal. Each party was to present witnesses at a summary trial (with one day of focusing on entitlement and one day, if necessary, on damages), with the presiding judge rendering a binding decision. Prior to the summary trial, the presiding judge and parties utilized telephone conferences to engage in discussions regarding the evidentiary record. A trial was not necessary, given that the anticipated testimony could be discussed. The presiding judge determined that the Government is liable under the contract and that the Government's position in the appeal was not substantially justified, such that relief under the Equal Access to Justice Act (EAJA) is available. The total Government liability is \$68,500. This lump sum amount includes payment for interest and attorney fees and costs which may be available under statute. The parties have entered into a settlement agreement, with the Government accepting liability in this amount. With payment, no further claims exist under or related to the contract or this dispute.

### **DECISION**

The Board grants the appeal. The contractor is to recover \$68,500 from the Government as full and final payment under the contract to resolve this dispute; no further claims may be asserted under or related to the contract or this dispute. Because this determination is final and binding, and (by agreement of the parties) is not subject to appeal, payment may be made pursuant to the CDA, 41 U.S.C. § 612.

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**JOSEPH A. VERGILIO**

Administrative Judge

Concurring:

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**HOWARD A. POLLACK**

Administrative Judge

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**ANNE W. WESTBROOK**

Administrative Judge

**Issued at Washington, D.C.**

**May 19, 2003**