

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Northrop Grumman Corporation) ASBCA Nos. 52178, 52784, 52785
)
Under Contract No. N00024-92-C-6300)

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OPINION BY ADMINISTRATIVE JUDGE DICUS ON APPELLANT'S MOTION
REGARDING RESPONDENT'S DEBT DETERMINATION AND
DENIAL OF APPELLANT'S DEFERMENT REQUEST

These appeals, taken from contracting officer's decisions asserting a Government claim (ASBCA No. 52785) and denying contractor claims (ASBCA Nos. 52178 and 52784), arose under a contract for a shipboard system and related equipment. Appellant seeks interlocutory rulings as to whether the Navy erred in its debt determination and whether the Navy acted in an arbitrary and capricious manner in denying appellant's request that debt collection be deferred. According to appellant, this is not a motion seeking partial summary judgment, but a request for a declaratory Board ruling as to whether FAR procedures were followed. We deny the motion.

Our declaratory authority is generally exercised in circumstances where a non-monetary dispute about contract interpretation or other non-monetary relief comes to the Board by way of a final decision or a deemed denial. Requests for such relief are presented as claims for the adjustment or interpretation of contract terms or "other relief" pursuant to the FAR definition of "claim." *Garrett v. General Electric Company*, 987 F.2d 747

(Fed. Cir. 1993). In the appeals here at issue we are presented with classic money claims.* We have taken jurisdiction in these appeals. Thus, the question is not whether appellant's request for relief is a claim that comes within our jurisdiction. The question is, within the context of these already-docketed appeals, how should we treat appellant's motion. With respect to whether the debt determination complied with FAR, we see no basis for addressing the motion as other than a motion for partial summary judgment seeking, as it does, a Board ruling on a contested issue that bears upon the outcome of the case. *See* FED. R. CIV. P. 56(a). As both parties concede the existence of material issues of fact, the motion must be denied.

Appellant also asks us to find that respondent was arbitrary and capricious in its denial of appellant's deferment request. What appellant seeks from the Board with respect to the deferment issue is tantamount to enjoining the Navy from taking collection action. We have held that to be beyond our jurisdiction. *Applied Ordnance Technology*, ASBCA Nos. 51297, 51543, 98-2 BCA ¶ 30,023. The motion is denied.

Dated: 5 April 2001

CARROLL C. DICUS, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

* We have refused to exercise our declaratory authority where the real issue is money. *Woodington Corporation*, ASBCA No. 37272, 89-2 BCA ¶ 21,602. Thus, even as a request for interpretation or "other relief," we would deny appellant's motion.

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 52178, 52784 and 52785, Appeals of Northrop Grumman Corporation, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals