

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Westfield Insurance Company) ASBCA No. 59430
)
Under Contract No. W9128F-09-C-0049)

APPEARANCE FOR THE APPELLANT: Dennis J. Bartlett, Esq.
Brosseau Bartlett Seserman, LLC
Greenwood Village, CO

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
James M. Pakiz, Esq.
Assistant District Counsel
Thomas J. Tracy, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Omaha

ORDER OF DISMISSAL

The captioned contract was awarded to MaxFour Engineers and Architects, LLC (MaxFour) by the United States Army Corps of Engineers, Omaha District (Corps), for the design/build of a child development center at Peterson AFB, CO. By letter dated 1 May 2014, a Corps contracting officer issued a final decision under the contract demanding payment of “\$492,246.55 in costs associated with the repair of the defective work which is the liability of the Contractor and/or Westfield Insurance as the project Surety”

On 18 June 2014, MaxFour appealed from the 1 May 2014 final decision. The Board docketed MaxFour’s appeal as ASBCA No. 59372.

On 22 July 2014, Westfield Insurance Company (Westfield) also appealed from the 1 May 2014 final decision. The Board docketed Westfield’s appeal as ASBCA No. 59430.

Westfield and the Corps have filed a joint motion to dismiss ASBCA No. 59430 without prejudice. In the motion, the Corps clarified that the contracting officer’s intent was to issue a claim against MaxFour, while simultaneously notifying Westfield of the claim. The motion included an “Addendum ‘A’” to the 1 May 2014 final decision, executed by the current Corps contracting officer, that amends the final decision by striking the words “and/or Westfield Insurance as the project Surety.”

Accordingly, ASBCA No. 59430 is dismissed without prejudice. This dismissal does not impact MaxFour's prosecution of ASBCA No. 59372.

Dated: 18 November 2014



JOHN J. THRASHER
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 59430, Appeal of Westfield Insurance Company, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals