

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
White Hand Company, LLC ) ASBCA No. 59184  
 )  
Under Contract No. 1108-MROC-004 )

APPEARANCE FOR THE APPELLANT: Mr. Haider Zaid Shahata  
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
LTC Mark A. Ries, JA  
LTC Peter D. DiPaola, JA  
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DICKINSON ON THE  
GOVERNMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

Appellant White Hand Company, LLC, seeks payment from the United States Government for work done under the Iraqi Commander's Emergency Response Program (I-CERP) Contract No. 1108-MROC-004. The government has moved to dismiss the appeal for lack of jurisdiction. Appellant opposes the motion.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. The contract at issue was awarded by the Mosul Reconstruction Operations Center (MROC) on 10 December 2008 (gov't mot., ex. 5). The MROC and its mission were described by its former Deputy Chief as:

2. The MROC was established in partnership with the Iraqi government to assist the local populous of the Ninevah Province in building civil capacity through the execution of reconstruction projects, which were executed under the [I-CERP]. I-CERP projects involved urgent, small-scale, humanitarian relief, and reconstruction projects and services that would immediately assist the indigenous population and were of a scale that the local population or government could sustain. These projects were solely for the benefit of the Iraqi people and could not be for the direct benefit or the use of the U.S. government

or Coalition Forces. All I-CERP projects utilized Iraqi Government funds.

3. Concerning these reconstruction projects, the MROC synchronized its efforts in nominating projects with the cognizant Iraqi ministries and Director Generals. The Director Generals would then approve projects and select the contractors. At this point, an I-CERP Project Purchasing Officer (“PPO”) would award the I-CERP projects to the selected contractors and undertake the administration’s projects to ensure the contractors executed them properly.

4. In I-CERP project number 1108-MROC-004, the MROC sought to repair damage caused to the Al Salaam Hospital by a vehicle-borne improvised explosive device [in order to] enable the restoration of health care service to the residents of Mosul.

(Gov’t mot., ex. 1, *see also* gov’t mot., exs. 2-5, 8)

2. Specifically, the guidance for purchases under the I-CERP provides:

[I-CERP] funds are government of Iraq (GOI) funds for urgent reconstruction projects to benefit the citizens of Iraq while simultaneously growing and achieving Iraqi military and civil self-sufficiency. I-CERP uses U.S. procurement and financial systems. GOI allocates I-CERP funds by province based on population density.

I-CERP rules and guidance:

....

- Prominently feature the new Iraqi flag and use other techniques to associate I-CERP projects with an Iraqi government that is working to live up to its promise of essential services.

....

Specific uses for I-CERP include the following:

....

- Health clinics; repair or reconstruction.

....

I-CERP cannot be used for the following:

....

- Projects with a direct or indirect benefit to U.S., coalition, or supporting military personnel.

(Gov't mot., ex. 9 at 23-24)

3. There is no provision in the I-CERP contract (gov't mot., ex. 5) or in the I-CERP guidance (gov't mot., ex. 9 at 23-25) that gives the Board jurisdiction to adjudicate disputes under the contract.

4. The project work was considered complete on 18 April 2009 and turned over to the Government of Iraq on that date. The I-CERP Final Government of Iraq Closure Letter stated:

Signing of this document signifies final closure of the enclosed project, relinquishes further responsibility from Coalition Forces and represents receipt of responsibility for further operating and maintenance costs to the Government of Iraq.

(Gov't mot., ex. 7) The document was signed by the Deputy Director General of Health on behalf of the Government of Iraq.

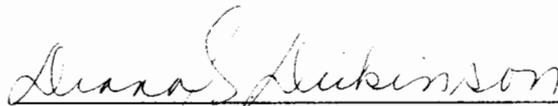
### DECISION

We have previously held that we have no jurisdiction to decide disputes arising under CERP contracts which, even though funded with United States Government appropriated funds, are for the direct benefit of the indigenous population of Iraq and Afghanistan. *Latifi Shagiwall Construction Co.*, ASBCA No. 58872, 15-1 BCA ¶ 35,937. The evidence before us demonstrates that I-CERP contracts are even further removed from our jurisdiction as they are contracts funded entirely by the Iraqi Government for the direct benefit of the Iraqi people. The only involvement of the United States Government in an I-CERP contract is to act as the agent of the Iraqi Government in issuing the Iraqi-funded contracts and administering them to ensure

that the contract is performed as required by its terms. There is no evidence that the I-CERP contract now at issue provides any remedy to the contractor that obligates the United States Government or its funds, nor is there any provision which creates jurisdiction for this Board to adjudicate disputes under the I-CERP contract.

The government's motion to dismiss for lack of jurisdiction is granted.

Dated: 2 June 2015



DIANA S. DICKINSON  
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



RICHARD SHACKLEFORD  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 59184, Appeal of White Hand Company, LLC, rendered in conformance with the Board's Charter.

Dated:

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