

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
SKE Technical Services GmbH) ASBCA No. 59711
)
Under Contract Nos. DABN01-03-C-0025)
W912PE-04-D-0001)

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Trial Attorney

ORDER OF DISMISSAL ON APPELLANT’S MOTION TO DISMISS
FOR LACK OF JURISDICTION

This order arises from SKE Technical Services GmbH’s (SKE-TS’s) motion to dismiss this appeal for lack of subject matter jurisdiction. The Department of the Army (government) awarded the captioned contracts to BOS GmbH (BOS) for various maintenance services at Army bases in Germany (R4, tabs 1-2). BOS is an acronym for Base Operation Services GmbH, a joint venture between SKE International GmbH, a German entity, and Burns & Roe Services Corp., an American entity (SKE-TS mot. at 1-2, ¶ 3; gov’t resp. at 1, ¶ 1; R4, tab 10 at 1, ¶ 2). On 17 November 2014, the contracting officer (CO) issued a final decision (COFD) asserting a government claim against BOS demanding payment for alleged unallowable costs under Federal Acquisition Regulation (FAR) Part 31 in fiscal year 2007. The decision was addressed to “SKE Technical Services GmbH (formerly Base Operation Services GmbH).” (R4, tab 9) The docketed appeal was captioned as “Appeal of SKE Technical Services GmbH, f/k/a Base Operations Services GmbH” (Bd. notice of docketing dtd. 2 December 2014).¹

¹ The notice of appeal, as well as other documents in the correspondence and Rule 4 files, incorrectly refer to “Base Operations Services GmbH.” The company’s actual name is “Base Operation Services GmbH.”

SKE-TS moves to dismiss the appeal for lack of jurisdiction, arguing that it is not a “contractor” under the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, because it has no privity of contract with the government under the relevant contracts (SKE-TS mot. at 3). The government does not oppose dismissal and agrees that its demand is not against SKE-TS, but against BOS, the contractor (gov’t resp. at 4). In her declaration, the CO confirmed that the final decision asserts a claim against BOS rather than SKE-TS (R4, tab 10 at 2-3, ¶ 14). For the Board to exercise jurisdiction over an appeal from a COFD under the CDA, the appeal must be filed by a contractor. 41 U.S.C. § 7104(a); *Binghamton Simulator Co.*, ASBCA No. 59117, 14-1 BCA ¶ 35,715 at 174,871. Since the parties agree that SKE-TS is not a contractor with respect to these contracts, and nothing in the review of the limited record indicates otherwise, it is determined that the Board lacks jurisdiction over this appeal. Accordingly, SKE-TS’s motion is granted and the appeal is dismissed. The appeal caption is changed to reflect this opinion.

Dated: 23 March 2015



JOHN J. THRASHER
Administrative Judge
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. 59711, Appeal of SKE Technical Services GmbH, rendered in conformance with the Board’s Charter.

Dated:

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