

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
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BAE Systems Tactical Vehicle Systems LP ) ASBCA Nos. 59491, 60433  
 )  
Under Contract No. W56HZV-08-C-0460 )

APPEARANCES FOR THE APPELLANT: David Z. Bodenheimer, Esq.  
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APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
CPT Harry M. Parent III, JA  
Robert B. Neill, Esq.  
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE O’SULLIVAN ON THE  
GOVERNMENT’S MOTION TO DISMISS APPEALS AS MOOT

Appellant, BAE Systems Tactical Vehicle Systems LP (BAE TVS) appealed from a contracting officer’s final decision claiming that BAE TVS provided defective cost or pricing data in 2008 negotiations to definitize a contract award for tactical vehicles and seeking the amount of \$56,386,953, net of accepted offsets (ASBCA No. 59491). BAE TVS also appealed from the contracting officer’s deemed denial of its revised offset proposal (ASBCA No. 60433). On 25 July 2016, the Board denied the government’s motion for an indefinite stay of proceedings pending resolution of a related False Claims Act case filed in federal district court for the Eastern District of Michigan. *BAE Systems Tactical Vehicle Systems LP*, ASBCA Nos. 59491, 60433, 16-1 BCA ¶ 36,450. Familiarity with that decision is presumed.

On 17 November 2016 the contracting officer unequivocally rescinded her final decision finding defective pricing, in its entirety, and disclaimed any intention on the part of the government to issue a new final decision. Thereafter, the government filed the pending motion seeking to have both appeals dismissed as moot. Appellant does not oppose the government’s motion.

## DECISION

Where a contracting officer unequivocally rescinds a government claim and the final decision asserting that claim, with no evidence that the action was taken in bad faith, there is no longer any claim before the Board to adjudicate. The government's voluntary action moots the appeal, leaving the Board without jurisdiction to entertain the appeal further. *Combat Support Associates*, ASBCA Nos. 58945, 58946, 16-1 BCA ¶ 36,288 at 176,973, and cases cited therein.

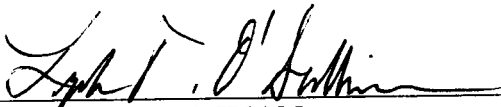
Here, the contracting officer unequivocally rescinded the final decision asserting the government claim that is the subject of these appeals, stating expressly:

The government claim asserted in references (a) and (b) [PCO 11 June 2014 Demand letter, Final Decision, and DCAA Audit Report dated 15 July 2014] and the Final Decision in reference (b) are hereby unequivocally and entirely rescinded. The Government has no intention of issuing a new Final Decision from those references.

(Gov't mot. to dismiss, ex. 1) Thus, the government has voluntarily provided the relief sought in these appeals and there is no suggestion that the rescission is in bad faith. Additionally, offsets are allowed to the extent of overstatements only, *Cutler-Hammer, Inc. v. United States*, 416 F.2d 1306, 1312 (Ct. Cl. 1969), thus the offsets raised in ASBCA No. 60433 are mooted as well by the rescission of the final decision.


For the reasons above, the appeals are dismissed as moot. Dismissal of an appeal as moot after rescission of a government claim is not a determination on the merits. *Combat Support Associates*, 16-1 BCA ¶ 36,288 at 176,973; *Lasmer Industries, Inc.*, ASBCA No. 56411, 10-2 BCA ¶ 34,491 at 170,123.

Dated: 5 December 2016

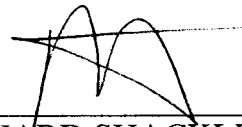
  
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LYNDA T. O'SULLIVAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur

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

I concur

  
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 Nos. 59491, 60433, Appeals of BAE Systems Tactical Vehicle Systems LP, rendered in conformance with the Board's Charter.

Dated:

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