

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Nimrah Construction Company) ASBCA No. 61215
)
Under Contract No. W91B4M-09-C-7174)

APPEARANCE FOR THE APPELLANT: Mr. Abdul Basir
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
MAJ Adam Kama, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD ON THE
GOVERNMENT'S MOTION TO COMPEL AND DISMISSAL
FOR FAILURE TO PROSECUTE

The government has moved to compel appellant to produce documents requested on discovery. Appellant failed to produce the documents, failed to show cause why the motion to compel should not be granted and has not responded to the Board's orders to do so even as we advised that the appeal might be dismissed for failure to prosecute. As set out below, we dismiss this appeal for failure to prosecute. We deny the government's motion to compel as moot.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTIONS

1. Nimrah Construction Company has appealed the denial of its claim for \$1,360,514.86 under the above-captioned Army construction contract performed in Afghanistan.
2. On 22 November 2017, the government submitted its first request for production of documents with an agreed suspense date of 8 December 2017 (ex. G-3).*
3. On 13 December 2017, the government inquired as to when the documents would be produced (ex. G-4) to which appellant replied on 14 December 2017, that it was working on it and hoped to get it out within a week (ex. G-5).

* Exhibits are to the government's motion to compel.

4. Again the government inquired on 5 January 2018, as to when it could expect the documents (ex. G-6). Appellant, on 16 January 2018, replied that it was working on getting the documents and apologized for the delay (ex. G-8).

5. On 1 February 2018, the government filed a motion to compel the production of the documents requested and to provide information responsive to its discovery request.

6. By date of 6 February 2018, the Board issued to appellant an order to show cause, on or before 2 March 2018, why the motion to compel should not be granted.

7. As of 2 April 2018, the Board had not received a response to its order to show cause. Thus, on that date, appellant was directed by the Board respond to its order on or before 20 April 2018, or the Board might dismiss the appeal for failure to prosecute.

8. As of 15 May 2018, appellant has not responded to the Board's show cause order.

DECISION

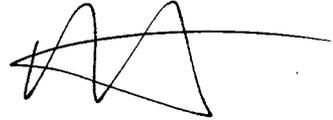
Board Rule 17 provides in part as follows:

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute.... If good cause is not shown, the Board may take appropriate action.

Appellant has not complied with the Board order to show cause as to why the government's motion to compel should not be granted. We advised appellant that its continuing failure to respond to the order could lead to dismissal for failure to prosecute. It has not responded to the government's motion and has not responded to the Board's order although given ample opportunity to do so.

We find that appellant has not complied with Board orders and by its inaction indicates an intention not to continue the prosecution of this appeal. Accordingly, the appeal is dismissed for failure to prosecute pursuant to Board Rule 17. In light of this result, the motion to compel is denied as moot.

Dated: 16 May 2018



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

I concur



OWEN C. WILSON
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I concur



HEIDI OSTERHOUT
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. 61215, Appeal of Nimrah Construction Company, rendered in conformance with the Board's Charter.

Dated:

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