

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Andrews Contracting Services, LLC) ASBCA No. 61512
)
Under Contract No. W912JV-15-C-0001)

APPEARANCE FOR THE APPELLANT: Mr. Kelly Flynn
Corporate Secretary

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
Harry M. Parent III, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON THE GOVERNMENT'S MOTION TO DISMISS FOR
FAILURE TO PROSECUTE

On January 2, 2019, the government moved to dismiss the subject appeal for failure to prosecute. We grant the motion.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On June 22, 2017, Andrews Contracting Services, LLC, submitted a certified claim to the contracting officer seeking to recover \$293,797.51. On October 30, 2017, the contracting officer issued a final decision denying that appeal. A timely appeal was made to this Board on January 29, 2018, and the appeal was docketed as ASBCA No. 61512.

2. By letter dated March 20, 2018, the Board asked the parties to confer and to advise within 60 days as to whether each wanted a hearing or a record submission under Board Rule 11 and also to state any objections to any documents submitted to date under Board Rule 4.

3. On May 29, 2018, the parties were directed to respond to the March 20, 2018 order within 21 days. Appellant did not respond.

4. The government responded on June 17, 2018, stating that the parties had conferred but that submission was unclear as to whether appellant joined in or agreed with the elections stated by the government, and thus, on July 23, 2018, appellant was

directed to indicate within seven days as to whether it agreed with the matters set forth in the government's June 2018 letter. No response was received from appellant.

5. On November 15, 2018, the government filed a motion requesting the Board to issue an order to appellant to show cause why the appeal should not be dismissed for failure to prosecute for its failure to respond to numerous Board orders and for its failure to respond to a government discovery request of August 23, 2018. We issued that order on November 20, 2018, with a response due in 30 days, and as of January 7, 2019, appellant has not responded.

DECISION

Board Rule 17 provides 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. In the case of a default by the Government, the Board may issue an order to show cause why the Board should not act thereon pursuant to Rule 16. If good cause is not shown, the Board may take appropriate action.

In this appeal appellant has not responded to numerous Board orders over an extended period of time and has not responded to the government's discovery request. We conclude that appellant has no intention to continue the prosecution of this appeal. Accordingly, this appeal is dismissed with prejudice.

Dated: January 18, 2019



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

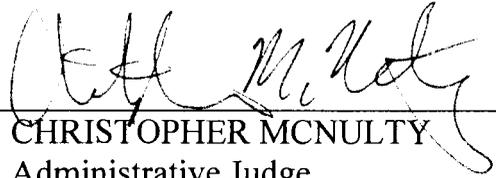
(Signatures continued)

I concur



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

I concur



CHRISTOPHER MCNULTY
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. 61512, Appeal of Andrews Contracting Services, LLC, rendered in conformance with the Board's Charter.

Dated:

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