

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
TLT Construction Corp.) ASBCA No. 53769
)
Under Contract No. DACA21-97-D-0015)

APPEARANCE FOR THE APPELLANT: Mr. Joseph E. Bondi
Vice President

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
Susan K. Weston, Esq.
Terry G. Peters, Esq.
Engineer Trial Attorneys
US Army Engineer District,
Savannah

OPINION BY ADMINISTRATIVE JUDGE COLDREN

The Government has moved to dismiss this appeal for lack of subject matter jurisdiction as not being based upon a claim cognizable under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613. Based on the parties' submissions and the record, the motion is granted.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

TLT Construction Corp. (TLT or appellant) contracted with the U.S. Army Corps of Engineers (Corps) to renovate barracks at Fort Bragg, North Carolina.

In August of 2001, the contracting officer issued an unsatisfactory evaluation of TLT's work on the contract (R4, tab 2). Appellant requested that the District Engineer review that evaluation (R4, tab 3). The District Engineer responded to appellant's request by finding that the contracting officer's evaluation was supported by the evidence and the unsatisfactory rating justified. (R4, tab 4) TLT filed an appeal to this Board of the Government's negative assessment of appellant's work and sought to have that evaluation corrected.

Neither the contract nor any settlement agreement provision contain language concerning performance evaluations.

The Government moved to dismiss the appeal. Appellant has responded and the Government declined to file a reply.

DECISION

In its notice of appeal, TLT stated that it wanted to appeal “the decision to issue a final unsatisfactory performance rating” on the contract. The Board has consistently held that it does not have jurisdiction to adjudicate such appeals. *See, e.g., Konoike Construction Co.*, ASBCA No. 40910, 91-3 BCA ¶ 24,170; *G. Bliudzius Contractors, Inc.*, ASBCA No. 42365, 92-1 BCA ¶ 24,605; *CardioMetrix*, ASBCA No. 50897, 97-2 BCA ¶ 29,319. There are two bases for these decisions. First, no CDA claim is before the Board. *See G. Bliudzius*, 92-1 BCA at 122,751. A performance evaluation under a contract is an administrative matter not a Government claim, and a contractor’s request that a contracting officer change an evaluation is not a contractor claim. *Id.* Second, the Board lacks authority to issue injunctive relief. *Id.*

Principally, appellant argues that the Board can set aside performance ratings based on our decision in *Coast Canvas Products II Company, Inc.*, ASBCA No. 31699, 87-1 BCA ¶ 19,678. In that decision, we held that we had jurisdiction to determine whether the terms of a settlement agreement barred a subsequently issued adverse performance evaluation by the contracting officer. We did this under our authority to consider claims for the adjustment or interpretation of contract terms.

Appellant argues that the Government violated the terms of the contract by not adhering to procedures specified in Corps regulations. It points to no terms in the contract concerning performance appraisals. Accordingly, we do not have a disputed contract term to interpret. *See Konoike Construction Co.*, 91-3 BCA at 120,908. Performance appraisals unless specified contractually are administrative matters over which we lack jurisdiction.

Having no CDA claim, no disputed contract term to interpret, and no authority to order a change to the evaluation challenged by appellant, the appeal must be dismissed.

Dated: 26 August 2002

JOHN I. COLDREN, III
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

EUNICE W. THOMAS
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. 53769, Appeal of TLT Construction Corp., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals