

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
L.S. Womack, Inc.) ASBCA No. 56598
)
Under Contract No. DAHA22-00-C-0010)

APPEARANCE FOR THE APPELLANT: Eugene R. Groves, Esq.
Edward J. Laperouse, II, Esq.
Taylor Porter Brooks
& Phillips, L.L.P.
Baton Rouge, LA

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.
Army Chief Trial Attorney
LTC Vince Vanek, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNGER
ON APPELLANT’S MOTION TO SUSPEND PROCEEDINGS UNDER RULE 30

In this appeal regarding a contract with the Mississippi Army National Guard (Guard) to construct a multipurpose weapons range, appellant L.S. Womack, Inc. (Womack) seeks over \$5 million beyond the amount awarded by the contracting officer on a claim for alleged differing site conditions, changes, government interference and design defects. After the filing of Womack’s extensive complaint, the Guard filed a 52-page answer denying all liability.

Womack subsequently filed the present motion to suspend the proceedings under our Rule 30. Womack urges suspension so that it may submit additional claims arising out of the contract to the contracting officer for a decision. Womack contemplates that, should the contracting officer deny “all or any part” of its additional claims, then it will appeal them to the Board, and seeks a suspension to allow this process to unfold. (Motion to Suspend Proceedings Under Rule 30 (app. mot.) at 1)

The Guard has opposed the motion. The Guard contends that, inasmuch as the pleadings now have been filed, it is ready to begin discovery and that any additional claims and appeals regarding the contract may be consolidated with this appeal “at the appropriate time.” (Government’s Opposition to Appellant’s Motion to Suspend Proceedings Under Rule 30 (gov’t opp’n) at 1) The Guard also insists that it will be prejudiced by a suspension because such a course would subject it to additional interest “in the event the current Appeal is sustained.” (*Id.*) The Guard also tells us that the

contracting officer is currently amending a portion of his decision giving rise to this appeal in order to retract “over \$2.2 million” of the amount awarded, having now concluded that he lacks enough facts to render the decision. (*Id.* at 2)

We deny the motion to suspend proceedings and conclude that the appeal instead should be dismissed without prejudice under Rule 30. “A Rule 30 dismissal is discretionary with the Board.” *Airborne Industries, Inc.*, ASBCA Nos. 45491 *et al.*, 95-1 BCA ¶ 27,496 at 137,032. Weighing the pleadings and the representations in the motion papers, that discretion should be exercised in favor of dismissal without prejudice. In the terms of Rule 30, the record points to matters that are “not within the control of the Board” and that may well continue “for an inordinate length of time.” Thus, the pleadings indicate that this case as presently structured is factually intensive. The contracting officer’s retraction of “over \$2.2 million” of the final decision foreseeably will recast the case and lead to further pleadings. The additional claims that Womack already intends to file will yield a new decision or decisions and an additional appeal or appeals. There is little reason to believe that consolidation of any new appeal or appeals can be accomplished seamlessly with this appeal once it has gotten underway. Moreover, the indefinite, open-ended suspension that Womack urges leaves the Board with little control over a case on its docket.

We are not persuaded by the Guard’s argument that it will be prejudiced by the accrual of interest under 41 U.S.C. § 611. Womack must win its case first for that to happen.

Appellant’s motion to suspend proceedings is denied. The appeal is dismissed under Rule 30 without prejudice to reinstatement within three years from the date of this opinion.

Dated: 28 April 2009

ALEXANDER YOUNGER
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)
I concur

I concur

MARK N. STEMLER

EUNICE W. THOMAS

Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

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. 56598, Appeal of L.S. Womack, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals