

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
)  
Green Dream Group ) ASBCA Nos. 57413, 57414, 57565  
)  
Under Contract No. W91GDW-08-D-0005 )

APPEARANCE FOR THE APPELLANT: Celeste R. Gamache, Esq.  
Watson & Associates, LLC  
Denver, CO

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
Stephanie B. Magnell, Esq.  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TUNKS  
ON THE GOVERNMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

Green Dream Group (GDG or appellant) appeals the disallowance of certain costs in connection with the termination for convenience of two task orders issued under a multiple award task order contract (MATOC). ASBCA No. 57413 is a claim for \$554,400 for machinery rental costs under task order (TO) No. 0260. ASBCA No. 57414, which also relates to TO No. 0260, is a claim for \$12,475 in security costs. ASBCA No. 57565 is a claim for \$224,400 for machinery rental costs under TO No. 0259. A hearing was held at the offices of the Board on 6-8 October 2011. On 9 November 2011, the government filed a Motion to Dismiss for Lack of Jurisdiction, alleging that GDG is not the same party that signed the contract and that we lack jurisdiction to decide the appeals. *See* 41 U.S.C. § 7101(7). On 8 March 2012, the Board requested more information on appellant's corporate status. Both parties responded.

Preliminarily, the government objected on various grounds to the admissibility of tabs 4, 6, 7, and 8 to appellant's response to the Board's request for information. We sustain the objection to tab 4, a dictionary definition, based on lack of completeness, and tabs 6 and 7, apparently relating to appellant's services, based on authenticity. We overrule the objection to tab 8, corporate minutes, since they have been authenticated by Ares Morita's declaration, consistent with Mr. Mansour's declaration of 28 September 2011, and are relevant to issues raised in the motion.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. The Joint Contracting Command – Iraq/Afghanistan (government) awarded the subject MATOC to Green Dream/Green Dream Ltd. (GD/GDL) on 24 May 2008 (ASBCA Nos. 57413, 57414 (57413/14), R4, tab 1; ASBCA No. 57565 (57565), R4, tab 1). The MATOC identified the contractor as:

Green Dream  
Green Dream Ltd.  
7, ABDULLAH 41, NADHAL ST,  
BAGHDAD. IRAQ  
info@greendreamtrading.com  
+964-0770-532-3955  
1-215-989-4521

(57413/14, R4, tab 1 at 2 of 31)

2. Mr. Ahmad Hassan Mansour is the president of GD/GDL and GDG. His declaration of 28 September 2011 states, in part, as follows:

2. I am the President and 100% owner of Green Dream Ltd (“GDG”). I have held this position since 2008.

3. Jamel Mohsen and Thaeer Mohsen started GDG in 2005. It was incorporated in Iraq on October 30, 2005.

4. I joined GDG as the Managing Director in 2006 and led all activities of GDG since 2006. In April 2008, I bought 100% ownership of GDG from Jamel and Thaeer Mohsen.

5. When GDG was founded, it was founded with the English name “Green Dream.” This was done because the Mohsens intended to do business with the Americans.

....

11. The contract and task orders were issued to Green Dream Ltd. Our settlement proposal...[was] in the name of “Green Dream Group.” We have also referred to our

company as "Green Dream." All of these names represent the same company, Green Dream Ltd....<sup>[1]</sup>

(App. resp. to request for information dtd. 8 March 2012, tab 5)

3. GD's shareholders ratified the sale of all of its stock to Mr. Mansour on 30 April 2008. The minutes of the meeting identified the sellers as Messrs. Jamal and Thair Mhesen Jasim. (App. resp. to RFI, tab 8)

4. Mr. Mansour's 15 December 2011 declaration states, in part, as follows:

3. I know that Mr. Talib, my Director of Finance started a company named Green Dream International ("GDI") in 2009 in the United States. GDI was not part of GDG in any way.<sup>[2]</sup>

4. Jamel Mohsen and Thayer Mohsen started Green Dream Ltd ("GDL"). The actual date the documents for GDL were completed and approved in Iraq was October 30, 2005....

5. GDL/GDG had office[s] in several locations around Baghdad. As GDG downsized, [it] only kept two offices. While GDL/GDG was located at 7, Abdullah, 41 Nadhal St., Baghdad, Iraq, when we were awarded this contract, but due to an explosion near to this office, we moved our main office to 199, Zuqaq, 20, Mahaleh 766, Baghdad, Iraq, by the time we filed the claims. [We] are...currently using both addresses....

....

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<sup>1</sup> GD/GDL is also known as Green Dream Company for general trade limited, Green Dream (GD), Green Dream Ltd. (GDL), Green Dream Company, Green Dream General Trading LTD., and Green Dream Group (57413/14, R4, tabs 7, 9; 57565, R4, tabs 19a, 39; app. resp. to mot., tab 2, ¶ 6, tab 5 at 3; gov't reply to app. resp., dtd. 4 January 2012, tabs 6, 8).

<sup>2</sup> GD/GDL's DUNS number is 631429839 and its CAGE/NCAGE code is SCN72 (gov't mot., tab 2). GDI's DUNS number was 831374546 and its CAGE/NCAGE code was 5PJH6 (gov't mot., tab 14).

8. GDG has gone from a company with many employees and contracts to a very small company with few contracts in a very short period of time. Because of this rapid decline in revenue, we have reduced our full-time staff to five people.

(App. resp. to mot., tab 2)

5. The declaration of Mr. Mohammed Talib Rashak dated 15 December 2011 states in part, as follows:

2. I am the Director of Finance for Green Dream Group (“GDG”). I have held this position since 2007.

3. I started a company named Green Dream International (“GDI”). I filed for incorporation in the state of Arkansas on 26 June 2009. I decided not to continue with this company and allowed its incorporation status to lapse on 31 December 2010.

4. In Dun and Bradstreet and in CCR, I listed the same telephone number as Green Dream Group (“GDG”). I did this because I was working in Iraq with GDG. The numbers listed connect to a satellite connection to call Iraq. The person in the U.S. calling me would only be charged for a long distance call and not an international call...

(App. resp. to mot., tab 1)

6. On 25 September 2008, the contracting officer (CO) issued TO No. 0259 to the following contractor:

GREEN DREAM  
GREEN DREAM LTD.  
7, ABDULLAH 41, NADHAL ST.  
BAGHDAD, IRAQ  
S.WALEED@GREENDREAMTRADING.COM

(57565, R4, tab 3)

7. On 27 September 2008, the CO issued TO No. 0260 to the following contractor:

GREEN DREAM  
GREEN DREAM LTD.  
7, ABDULLAH 41, NADHAL ST.  
BAGHDAD, IRAQ  
S.WALEED@GREENDREAMTRADING.COM

(57413/14, R4, tab 2)

8. On 24 August 2008, GD/GDL submitted a technical proposal for TO No. 0259, identifying itself as:

Green Dream Ltd.  
7, Abdullah, 41, Nadhal St,  
Baghdad – Iraq  
info@greendreamtrading.com  
Tel: +964-0770-532-3955  
DUNS#: 631429839  
NCAGE: SCN72  
CCR Registered

(57565, R4, tab 2 at 1-43)

9. On 11 November 2008, Mr. Talib entered into a “CONSULTING AGREEMENT” with AllForTek, Inc., a Texas corporation, on behalf of GD/GDL, to provide contract administration services, advice, and other business consulting services (gov’t mot., tab 17).

10. In November 2008, GD/GDL submitted a “Quality Plan” for TO No. 0259, identifying itself as:

Green Dream Ltd.  
7, Abdullah, 41, Nadhal St,  
Baghdad – Iraq  
info@greendreamtrading.com  
Tel: +964-0770-532-3955  
DUNS#: 631429839  
NCAGE: SCN72  
CCR Registered

(57565, R4, tab 2 at 1-29)

11. On 11 November 2008, the government issued the notices to proceed for TO Nos. 0259 and 0260. The notices were addressed to:

Green Dream LTD  
7, Abdullah, 41, Nadhal St.  
Baghdad, Iraq

(57413/14, R4, tab 3; 57565, R4, tab 4)

12. On 13 January 2009, the CO suspended work on TO No. 0260. The suspension notice was in the form of a memorandum addressed to "GREEN DREAM."  
(57413/14, R4, tab 4)

13. On 4 March 2009, the CO issued cure notices for TO Nos. 0259 and 0260. The notices were issued as memoranda and addressed to "GREEN DREAM, LTD."  
(57413/14, R4, tab 5; 57565, R4, tab 14)

14. On 18 March 2009, the CO suspended work on TO No. 0259. The suspension notice was issued as a memorandum and addressed to "GREEN DREAM." (57565, R4, tab 17)

15. On 15 April 2009, Mr. Jamal Kamal, GD/GDL's Chief Architect, sent an email to the CO advising as follows:

Kindly be informed that our company upgraded the structure to comply with the new vision, title of GD trading modified to GD Group. We have now consulting firm, contracting firm and trading office.

(57413/14, R4, tab 7 at 105)

16. On the same day, Mr. Sabah Hazme, GD/GDL's Director of Contracts Compliance, emailed the CO as follows:

Kindly requested to know that due to the problems we had with our server during the past two days, we have changed our E-mail address, the New one is:  
[s.alzeheri@greendreamgr.com](mailto:s.alzeheri@greendreamgr.com).

(App. resp. to RFI, tab 2)

17. On 24 May 2009, the CO terminated both TOs for the convenience of the government. The termination notices were issued as memoranda and addressed to "Green Dream." (57413/14, R4, tab 6; 57565, R4, tab 18)

18. On 9 July 2009, Mr. Talib, GDG's Director of Finance,<sup>3</sup> submitted a termination settlement proposal for TO No. 0260 (57413/14, R4, tab 7 at 1, 4). He identified the contractor as follows:

Green Dream Group  
199, Zuqaq 20, Mahaleh, 766  
Baghdad, Iraq  
Tel: 001-215-253-4414

19. On 13 August 2009, Mr. Talib submitted a termination settlement proposal for TO No. 0250, with an identical identification (57565, R4, tab 19 at 1, 4).

20. On 6 August 2010, the CO issued a final decision for TO No. 0260. The decision was issued as a memorandum and addressed to "GREEN DREAM GROUP." (57413/14, R4, tab 9)

21. GD/GDL and GDG submitted at least six invoices relating to the TOs. The last invoice was dated 10 August 2010. The invoices are all on "Green Dream" letterhead and contain the following inside address:

Green Dream Ltd.  
P.O. Box 18088  
Baghdad, Iraq  
Tel: (964) 0790-367-0523  
(1) 215-989-4521  
Fax: (1) 215-975-0956  
E-mail: info@greendreamtrading.com  
www.greendreamtrading.com

(57413/14, R4, tabs 12(a), 12(b), 12(c), 12(f); 57565, R4, tab 10)

22. P.O. Box 18088 corresponds to the mailing address on a Dun & Bradstreet (D&B) Business Information Report (report) (57565, R4, tab 47). The report was based on an interview given on 13 June 2007 and identified Mr. Sam Waleed as GDL's Chief Executive and Messrs. Waleed and Ali Saleh as major shareholders. Based on the report,

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<sup>3</sup> On 4 April 2011, we denied the government's motion to dismiss ASBCA No. 57413 (TO No. 0260) for lack of jurisdiction, finding that Mr. Talib was authorized to certify the claim. *Green Dream Group*, ASBCA No. 57413, 11-1 BCA ¶ 34,739.

the government urges us to find that Mr. Waleed was an owner of GD/GDL. In his 15 December 2011 declaration, Mr. Mansour states that neither Mr. Waleed nor Mr. Saleh ever owned any part of GD/GDL. The documents in the record indicate that Mr. Waleed was the “Deputy CSC Program Iraq” and “Senior Account Executive” for both GD/GDL and GDG (57413/14, R4, tabs 1, 7 at 39; 57565, R4, tabs 12, 19 at 10). As of 24 May 2010, Mr. Waleed was still listed as GDL’s electronic point of contact in the CCR (Central Contractor Registry) (gov’t mot., tab 2).

23. GDG’s updated CCR record “valid until 12/31/2011” states, in part, as follows:

DUNS: 631429839

....

CAGE/NCAGE: SCN72  
Legal Business Name: GREEN DREAM LTD.

....

Mailing Street Address 1: 7, ABDULLAH BUILDING,  
NADHAL ST.

....

Mailing City: BAGHDAD

....

Mailing Zip/Postal Code: 18088  
Mailing Country: IRQ

Business Start Date: 10/30/2005

....

Type of Organization: Partnership or Limited Liability Partnership

....

CCR Primary POC...[&] CCR Alternate CCR  
Name: MOHAMMED TALIB  
Email Address: [info@greendreamgr.com](mailto:info@greendreamgr.com)

U.S. Phone: 215-392-0406  
Non-U.S. Phone 790-189-2706

(App. resp. to mot., tab 3)

24. Between 18 August and 20 September 2008, the government awarded GD/GDL 22 task orders totaling \$59,581,912 under the MATOC (gov't mot., tab 27). Excluding TO Nos. 0259 and 0260, which are the subject of these appeals, the amount awarded was \$50,926,215. Mr. Mansour's declaration of 28 September 2011 also states that GDG was awarded nearly 300 contracts by the U.S. Government in Iraq and that it successfully performed those contracts as evidenced by letters written by U.S. personnel. The declaration attaches a single letter from LT William E. Moiles, CEC, USN, dated 25 May 2009, commending GDG for its performance of TO No. 1 from 17 July 2008 to 23 May 2009 under another contract. (App. resp. to RFI, tab 5)

25. On 2 November 2010, GDG timely appealed the denial of its claims in TO No. 0260 to this Board, identifying itself as follows:

Green Dream Group  
199, Zuqaq 20, Mahaleh, 766  
Baghdad, Iraq

26. The claim for machinery rental costs was docketed as ASBCA No. 57413 and the claim for security costs was docketed as ASBCA No. 57414 on 8 November 2010.

27. On 20 December 2010, the CO issued a final decision in TO No. 0259. The decision was issued as a memorandum and identified the contractor as:

GREEN DREAM GROUP  
199, Zuqaq 20, Mahaleh 766  
Baghdad, Iraq

(57565, R4, tab 39)

28. On 17 March 2011, appellant timely appealed the denial of its claim for machinery rental costs in TO No. 0259. We docketed the appeal as ASBCA No. 57565 on 18 March 2011. Appellant identified itself as:

Green Dream Group  
199, Zuqaq 20, Mahaleh, 766  
Baghdad, Iraq

## DECISION

The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, gives the Board jurisdiction to decide appeals from decisions of contracting officers on claims relative to any contract awarded by the Department of Defense. The CDA defines a “contractor” as a party to a government contract other than the government. 41 U.S.C. § 7101(7). When the government challenges the factual basis for our jurisdiction, as it does here, the allegations in the complaint are not controlling. We accept as true for purposes of the motion only the factual allegations that are uncontroverted. The facts supporting the challenged jurisdictional allegations are subject to fact finding by the Board, and the burden of establishing jurisdiction is on appellant. *Cedars-Sinai Medical Center v. Watkins*, 11 F.3d 1573, 1583-84 (Fed. Cir. 1993), *cert. denied*, 512 U.S. 1235 (1994); *AmerescoSolutions, Inc.*, ASBCA Nos. 56824, 56867, 11-1 BCA ¶ 34,705 at 170,905.

Appellant has proven that GD/GDL and GDG are one and the same entity. The government awarded the MATOC to GD/GDL on 24 May 2008. The address on the award document was 7, Abdullah 41, Nadhal St., Baghdad, Iraq. The government awarded TO Nos. 0259 and 0260 to GD/GDL on 25 and 27 September 2008 respectively. On 15 April 2009, GD/GDL advised the government that it was changing its name to GDG to reflect the fact that it henceforth planned to offer consulting services as well as contracting and trading services. On 24 May 2009, the CO terminated both TOs for the convenience of the government. Mr. Talib, GDG’s Director of Finance, submitted the termination settlement proposals under the name GDG. The address on the proposals was 199, Zuqaq 20, Mahaleh 766, Baghdad, Iraq. We accept Mr. Mansour’s explanation that GD/GDL changed its address due to an explosion. Since Baghdad was a war zone at this time, we find his explanation both plausible and reasonable. The contracting officers constructively recognized the name and address change when they issued final decisions to GDG at the new address.

The government offers a plethora of arguments opposing jurisdiction. Fundamentally, they depend upon various perceived discrepancies in documentation. Appellant has offered declarations of individuals with first-hand knowledge of the facts and supporting documentation. We conclude that appellant’s evidence is more persuasive.

CONCLUSION

The government's motion to dismiss for lack of jurisdiction is denied.

Dated: 13 September 2012



ELIZABETH A. TUNKS  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur



MARK N. STEMPLE  
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 Nos. 57413, 57414, 57565, Appeals of Green Dream Group, rendered in conformance with the Board's Charter.

Dated:

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