

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Shubhada Industries) ASBCA No. 58173
)
Under Contract No. SPM4A7-10-M-C273)

APPEARANCE FOR THE APPELLANT: Mr. Babu Metgud
Corporate Officer

APPEARANCES FOR THE GOVERNMENT: E. Michael Chiaparas, Esq.
DCMA Chief Trial Attorney
Christine M. Ciccotti, Esq.
Trial Attorney
Defense Contract Management Agency
Manassas, VA

OPINION BY ADMINISTRATIVE JUDGE YOUNGER
ON THE GOVERNMENT'S MOTION TO DISMISS

In this appeal challenging the termination settlement determination of a supply contract, the government moves to dismiss for lack of jurisdiction, asserting that appellant is not a valid corporate entity under state law and hence could not enter into the contract. Appellant generally contends that it is properly registered to transact business under state law. We deny the motion.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. By date of 9 April 2010, the Defense Supply Center, Richmond, Virginia, (Center) issued a request for quotations for the supply of specified cover assembly ducts, as well as for first article testing (Government's Motion to Dismiss for Lack of Jurisdiction (gov't mot.), ex. G-1). Thereafter, by date of 28 April 2010, Shubhada Industries, using Commercial and Government Entity (CAGE) Code 0UTX2, submitted a quotation to supply the ducts, as well as to perform first article testing (gov't mot., ex. G-2 at 1, 3). The record reflects that CAGE Code 0UTX2 was assigned to Shubhada Industries (gov't mot., ex. G-2 at 3). The record further reflects that Shubhada Industries was listed in the government's Central Contractor Registration (CCR) database as a "Corporate Entity, not Federal Tax Exempt (State of Incorporation is NJ)" (gov't mot., ex. G-4 at 1). Nonetheless, it appears undisputed that Shubhada Industries was not a corporate entity (gov't mot. at 2, ¶ 4; Shubhada's Opposition to DLA'S Motion to Dismiss (app. opp'n) at 4-6).

2. By date of 7 May 2010, the Center awarded Contract No. SPM4A7-10-M-C273 to Shubhada Industries for the supply of the specified ducts, as well as for first article testing, for \$99,597 (gov't mot., ex. G-3 at 1). On the DD Form 1155, in box 9, CONTRACTOR, all that appears is the name and address of Shubhada Industries, together with Shubhada Industries' CAGE Code (*id.*).

3. The contract contained various standard clauses, including FAR 52.204-7, CENTRAL CONTRACTOR REGISTRATION (APR 2008); FAR 52.242-15, STOP-WORK ORDER (AUG 1989); and FAR 52.249-1, TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984) (gov't mot., ex. G-3 at 1, 3, 12, 16).

4. By date of 3 August 2010, the Center issued unilateral Modification No. P00001 to Shubhada Industries. The modification constituted a stop work order "DUE TO CHANGE IN DEMAND AND POSSIBILITY OF TERMINATION/CANCELLATION." (Gov't mot., ex. G-7 at 1-2) Thereafter, by date of 12 August 2010, the Center issued unilateral Modification No. P00002 to Shubhada Industries, terminating the contract for the convenience of the government (gov't mot., ex. G-8).

5. By date of 10 August 2011, appellant submitted a final settlement proposal seeking \$58,059.21 in termination settlement costs (gov't mot., ex. G-10 at 1). Ultimately, by email dated 8 December 2011, the government offered Shubhada Industries \$500 in settlement termination expenses (gov't mot., ex. G-12 at 1).

6. The parties failed to agree on a termination settlement amount. By final decision dated 20 March 2012, the termination contracting officer determined that Shubhada Industries was due \$500 as a result of the termination of the contract (gov't mot., ex. G-14). Appellant thereafter brought this timely appeal.

7. The record includes a Certificate of True Name – NJSA 56:1-2, reflecting that Babu Metgud was registered in Burlington County, New Jersey, on 21 January 2010 to do business under the fictitious name of Shubhada Industries (app. opp'n at 4-6).

DECISION

The government originally moved to dismiss this appeal by advancing the factual argument that "Shubhada, Inc. is Shubhada Industries," as well as the legal argument that the contract is a nullity because the state of New Jersey had revoked Shubhada, Inc.'s certificate of incorporation before contract award (gov't mot. at 3, 4-8). The government further told us that, because Shubhada, Inc. was a defunct corporation, it lacked the authority to file the termination settlement proposal that is at issue (*id.* at 8-9).

In opposing the motion, appellant asserted that it properly registered to transact business under state law. Appellant represented that “Shubhada Industries was registered on January 21, 2010,” over three months before contract award on 7 May 2010 (Bd. corr. ltr. dtd. 13 September 2012 at 1; *see* statement 2). Appellant proffered a copy of its certificate from the County Clerk of Burlington County, New Jersey, dated 21 January 2010 and certifying that Mr. Metgud was conducting business under the fictitious business name of Shubhada Industries (app. opp’n at 5-6).

In reply, the government nonetheless insisted that it “did not award a contract to Shubhada Industries, a sole proprietorship” (Government’s Response to Appellant’s Opposition to the Government’s Motion to Dismiss for Lack of Jurisdiction (gov’t reply br. at 7). The government asserted that the contract “with Shubhada, the corporation, was a nullity...due to Shubhada’s failure to maintain its certificate of incorporation” (*id.*).

After considering the motion papers and other documents in the record, we deny the government’s motion to dismiss for the reasons set forth below.

First, the premise of the government’s motion is that we lack jurisdiction “due to [appellant’s] revoked corporate charter” (gov’t br. at 7). Hence, the issue is “whether [appellant], the proponent of the Board’s jurisdiction, has established the factual basis for such jurisdiction.” *Aries Marine Corp.*, ASBCA No. 37826, 90-1 BCA ¶ 22,484 at 112,847.

Second, contrary to the government’s argument, the contractor plainly was Shubhada Industries, not Shubhada, Inc. Shubhada Industries submitted the quotation using its CAGE Code (statement 1), not that of any other contractor. A CAGE code is “[a] code assigned by the Defense Logistics Information Service...to identify a commercial or Government entity,” DFARS 204.7201(a)(1) (2009), and hence we cannot treat it as meaningless. In addition, the motion papers reveal that the contracting officer issued unilateral Modification Nos. P00001 and P00002 to Shubhada Industries (statement 4), not to Shubhada, Inc. Similarly, both settlement proposals were submitted by Shubhada Industries (statement 5), and the termination contracting officer issued her final decision to Shubhada Industries (statement 6). Nothing in the record now before us—other than attorney argument—reflects that Shubhada, Inc. was a party to the contract.

Third, there is no triable issue regarding Babu Metgud’s filing to conduct business under the fictitious business name of Shubhada Industries. On this record, it appears that Mr. Metgud filed the requisite papers under N. J. Stat. Ann. 56:1-2 and was issued a certificate to do business as Shubhada Industries.

Fourth, contrary to the government’s argument, New Jersey’s fictitious business name statute does not limit Shubhada Industries’ capacity to contract or to maintain this appeal. We reject the government’s theme that appellant “has not demonstrated that it is

a legal corporation, that had authority to enter into contracts pursuant to New Jersey state law, or to seek relief under the Contract Disputes Act” (gov’t reply br. at 4). With respect to seeking relief under the Act, 41 U.S.C. § 7101(7) defines a “contractor” simply as “a party to a Government contract other than the Government.” The statute does not limit the term “contractor” to a corporation, and contractors in other than corporate form have sought relief here. *E.g., Christopher H. White*, ASBCA No. 56259, 08-2 BCA ¶ 33,885 (individual); *Hawaii CyberSpace*, ASBCA No. 54065, 04-2 BCA ¶ 32,744 at 161,937 (sole proprietorship); *Leonhard Weiss GmbH & Co. and Huebsch Industrieanlagen Spezialbau GmbH, Joint Venture*, ASBCA No. 37574, 93-1 BCA ¶ 25,443 at 126,700 (joint venture).

We also reject the government’s argument that Mr. Metgud was authorized to do business as Shubhada Industries “only within Burlington County, New Jersey,” and not “throughout the state of New Jersey” or elsewhere (gov’t reply br. at 3). Textually, N.J. Stat. Ann. 56:1-2 imposes no such territorial limitation. The statute simply requires registration with the county clerk, which has the effect of appointing the county clerk the agent upon whom process may be served for the registering firm. The statutory purpose is “to protect persons giving credit to one doing business under a fictitious business name,” *Rutkowsky v. Bozza*, 73 A. 502 (1909), not to define where such a firm may do business.

CONCLUSION

The government’s motion to dismiss is denied.

Dated: 21 March 2013



ALEXANDER YOUNGER
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMPLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



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. 58173, Appeal of Shubhada Industries, rendered in conformance with the Board's Charter.

Dated:

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