

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
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MicroTechnologies, LLC ) ASBCA Nos. 59911, 59912  
 )  
Under Contract No. FA4890-13-F-Q106 )

APPEARANCE FOR THE APPELLANT: Lewis P. Rhodes, Esq.  
Assistant General Counsel

APPEARANCES FOR THE GOVERNMENT: Lt Col Matthew J. Mulbarger, USAF  
Air Force Chief Trial Attorney  
Gregory A. Harding, Esq.  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MELNICK ON THE  
GOVERNMENT’S MOTION TO STRIKE

BACKGROUND

These consolidated appeals are from a contracting officer’s decision denying two claims submitted (one each on 3 February 2015 (ASBCA No. 59911) and 4 February 2015 (ASBCA No. 59912)) by appellant, MicroTechnologies, LLC (MicroTech), under a task order with the United States Air Force, Air Combat Command (notice of appeal; compl. and answer ¶ 4; R4, tab 6 at 1).<sup>1</sup> MicroTech seeks compensation for an alleged government delay, and payment for work performed prior to a stop work order. Each of MicroTech’s claims also allege that its CPAR (Contract Assessment Performance Report) evaluations were inaccurate and requests the contracting officer to revise the CPAR evaluations. MicroTech contends that “[i]f [it] is successful in this appeal, then the Board would also be determining that the CPAR is inaccurate” (compl. ¶ 70). Among other things, the “Wherefore” clause of MicroTech’s complaint asks “that the Air Force be ordered to revise the CPAR to accurately reflect MicroTech’s performance” (*id.* at 10).

The government has moved to strike the complaint’s request that the Board order the CPAR revised. It contends that MicroTech is seeking injunctive relief that

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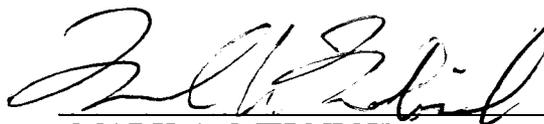
<sup>1</sup> MicroTech elected to process the appeal under the Small Claims (Expedited) Procedure provided by Board Rule 12.2. However, by letter dated 4 June 2015, the parties requested the Board to remove the appeal from that schedule and establish a procedure for briefing the issue addressed in this decision. That request was granted by order dated 9 June 2015.

the Board lacks jurisdiction to grant. In response, MicroTech concedes that the Board is not empowered to issue injunctions. However, it maintains that the Board “can find that the CPAR is arbitrary, capricious, otherwise erroneous, or that the Air Force breached the duty of good faith and fair dealing” (app. resp. at 3). It argues that “this latter holding would be tantamount ‘ordering’ [sic] the Air Force to change the CPAR – even if the Board cannot directly order the Air Force to do so” (*id.*). It requests that its complaint be read to simply seek such a declaration. Alternatively, MicroTech suggests that “instead of striking portions of the complaint, the Board should allow MicroTech to file an amended complaint to revise the relief sought” (*id.* n.1).

### DECISION

The claims and complaint do not merely seek a declaration of rights. The claims ask that the CPAR be revised and the complaint asks “that the Air Force be ordered to revise the CPAR” (compl. at 10). As MicroTech acknowledges, the Board does “not have jurisdiction to grant specific performance or injunctive relief” and therefore may not order a CPAR revised. *Versar, Inc.*, ASBCA No. 56857, 10-1 BCA ¶ 34,437 at 169,959. Because the Board lacks jurisdiction to grant such relief, the government’s motion to strike is granted.<sup>2</sup>

Dated: 29 September 2015



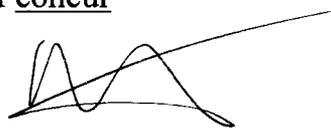
MARK A. MELNICK  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



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

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<sup>2</sup> To the extent MicroTech wishes to amend its complaint, it must file a motion for leave to do so that attaches its proposed amended pleading.

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. 59911, 59912, Appeals of MicroTechnologies, LLC, rendered in conformance with the Board's Charter.

Dated:

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