

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Sacred Power Corporation ) ASBCA No. 60083  
)  
Under Contract No. N62583-12-D-0764 )

APPEARANCE FOR THE APPELLANT: Craig A. Jacobson, Esq.  
Hobbs, Straus, Dean & Walker, LLP  
Portland, OR

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.  
Navy Chief Trial Attorney  
Pamela J. Nestell, Esq.  
Senior Trial Attorney

ORDER OF DISMISSAL

This appeal arises from a 23 April 2015 contracting officer's final decision denying appellant's 27 March 2015 non-monetary claim that requested termination of a task order (TO5) for convenience and a modification of appellant's performance rating. The Board directed the parties to address the issues of its jurisdiction over appellant's claim and whether the allegations in the claim were sufficient to state a claim upon which relief can be granted. Subsequently, the parties requested and were granted a stay of proceedings to pursue settlement discussions.

The government has moved to dismiss this appeal, asserting that the parties have settled the matters presently before the Board. While appellant does not dispute that the parties reached settlement and does not object to dismissal of its appeal, it advocates that dismissal should be without prejudice because performance of TO5 is ongoing and it intends to submit a future monetary claim for alleged damages in connection with TO5.

The government points to the following language in the bilateral contract modification that sets forth the parties' settlement terms: "Sacred Power Corp does not waive its rights to submit a request for equitable adjustment or claim for costs or delays that have occurred previously to this modification" and opines that dismissal with prejudice of the two matters at issue in this appeal "will not preclude any other claims [appellant] now has or that may arise under TO5."

The parties were provided drafts of this dismissal order and neither objects to its issuance. Accordingly, this appeal is dismissed without prejudice to an appeal arising from a future claim under the relevant task order.

Dated: 1 March 2016



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

I certify that the foregoing is a true copy of the Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 60083, Appeal of Sacred Power Corporation, rendered in conformance with the Board's Charter.

Dated:

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