

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
DCX-CHOL Enterprises, Inc. ) ASBCA No. 60782  
 )  
Under Contract Nos. SPM4A4-11-V-4143 )  
SPM4A6-11-C-0081 )

APPEARANCE FOR THE APPELLANT: Mr. Brian Gamberg  
Executive Vice President

APPEARANCES FOR THE GOVERNMENT: Daniel K. Poling, Esq.  
DLA Chief Trial Attorney  
Edward R. Murray, Esq.  
Elan D. Taylor, Esq.  
Trial Attorneys  
DLA Aviation  
Richmond, VA

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

Appellant, DCX-CHOL Enterprises, Inc. (DCX-CHOL), appealed from a government demand for payment of \$59,590 for alleged defective cable assemblies. The government rescinded the demand for payment and requested dismissal of this appeal for lack of jurisdiction. DCX-CHOL failed to respond to the government's motion. We dismiss this appeal as moot.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. By letters dated 26 July 2016, the contracting officer (CO) notified DCX-CHOL that there were two deficiencies with the cable assemblies DCX-CHOL provided under order SPM4A4-11-V-4143 and eleven deficiencies with the cable assemblies DCX-CHOL provided under order SPM4A6-11-C-0081 (gov't mot., exs. B, C).

2. By letter dated 23 August 2016, the CO made a demand for payment in the amount of \$59,590 for the cable assemblies deficiencies listed in the letters dated 26 July 2016 (gov't mot., ex. D).

3. On 23 August 2016, DCX-CHOL filed its appeal from the demand for payment.

4. By letter dated 16 September 2016, the CO rescinded the demand for payment and stated that "we no longer intend to pursue this claim" and that the letter

does not “require any further action from DCX-Chol” (gov’t mot., ex. E). The CO requested DCX-CHOL to withdraw its appeal but stated that rescission was not contingent on withdrawal of the appeal (*id.*).

DISCUSSION

When a CO unequivocally rescinds a government claim and the final decision asserting that claim, with no evidence that action was taken in bad faith, that voluntary action moots the appeal and leaves us without jurisdiction to entertain the appeal any further. *Combat Support Associates*, ASBCA Nos. 58945, 58946, 16-1 BCA ¶ 36,288 at 176,973 (dismissing an appeal as moot where the CO rescinded the final decisions asserting the government claims); *KAMP Systems, Inc.*, ASBCA No. 54253, 09-2 BCA ¶ 34,196 at 168,995 (the CO stated there was no intention to issue a new decision).

That is the case here. The CO unequivocally rescinded the demand for payment that is the subject of this appeal and stated that the government no longer intends to pursue the matter (SOF ¶ 4). While the CO included language asking DCX-CHOL to withdraw its appeal, the action to rescind the demand for payment was not contingent on withdrawal of the appeal (*id.*). There is no evidence that the rescission was taken in bad faith. Therefore, the CO’s voluntary action moots the appeal and leaves us with nothing to adjudicate.

CONCLUSION

For these reasons, the appeal is dismissed as moot.

Dated: 15 March 2017



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TIMOTHY P. MCILMAIL  
Administrative Judge  
Armed Services Board  
of Contract Appeals

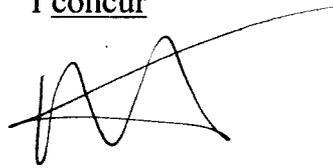
I concur

I concur



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



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RICHARD SHACKLEFORD  
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. 60782, Appeal of DCX-CHOL Enterprises, Inc., rendered in conformance with the Board's Charter.

Dated:

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