

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Lulus Ostrich Ranch) ASBCA Nos. 61225, 61226
)
Under Contract No. FA3016-12-P-0015)

APPEARANCE FOR THE APPELLANT: Mr. William R. Hayward
Owner

APPEARANCES FOR THE GOVERNMENT: Jeffrey P. Hildebrant, Esq.
Air Force Deputy Chief Trial Attorney
Heather M. Mandelkehr, Esq.
Capt Ryan P. Payne, USAF
Trial Attorneys

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

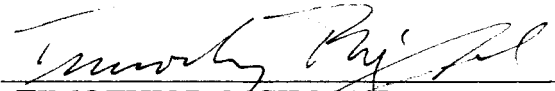
The government (Air Force) moves to dismiss the appeals for lack of jurisdiction. Appellant (Lulus Ostrich Ranch) says the government violated procurement rules in its award of ice delivery contracts to other contractors (app. resp. at 1-2, 8).^{*} The Board lacks jurisdiction to entertain those “bid protest-type” claims, which are dismissed. *See Carolina Oil Distributing Co.*, ASBCA No. 48093, 95-2 BCA ¶ 27,797 at 138,615.

However, appellant also claims that the awards breached its own ice delivery contract (FA3016-12-P-0015) with the government, saying that in “extending” appellant’s contract (which sounds like the exercise of an option for further ice deliveries) and then canceling the extension and awarding the contracts to appellant’s subcontractor, the government had “no intent of honoring [appellant’s] Extended Contract” and, instead, merely used the contract extension as a means of gaining time to allow appellant’s subcontractor to become eligible to perform the contracts in appellant’s stead (*see* app. resp. at 1-2). The Board has jurisdiction to entertain that claim. *See Teresa A. McVicker, P.C.*, ASBCA Nos. 57487, 57653, 12-2 BCA ¶ 35,127 at 172,463-64 (award of new contract to incumbent while trying to, and after award succeeding in, hiring incumbent’s employees to perform contract work as

* The case caption originally included Solicitation No. FA3016-17-U-0030 which resulted in Contract No. FA3016-17-P-0056, and Contract No. FA3016-16-F-0464, both of which were awarded to other than Lulus Ostrich Ranch. Since they were not awarded to appellant, they are removed from the caption, leaving only the contract appellant says was breached.


government employees was a *de facto* partial contract termination akin to a “bait and switch” that breached the duty of good faith and fair dealing). Therefore, the motion is granted only in part.

Dated: 7 September 2017




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

I concur



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

I concur



J. REID PROUTY
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. 61225, 61226, Appeals of Lulus Ostrich Ranch, rendered in conformance with the Board’s Charter.

Dated:

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