

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Shiloh Services, Inc. ) ASBCA No. 61134  
 )  
Under Contract No. W91247-12-C-0002 )

APPEARANCES FOR THE APPELLANT: Hector M. Benavides, Esq.  
Johnathan M. Bailey, Esq.  
Bailey & Bailey, P.C.  
San Antonio, TX

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
MAJ Adam Kama, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNG  
ON THE GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

The government moved for dismissal for lack of jurisdiction, asserting that the contracting officer (CO) issued a final decision that fully satisfies the relief requested by Shiloh Services, Inc. (Shiloh or appellant,) thus rendering the dispute moot. Appellant does not oppose the motion but requests that the dismissal order reflect that it is the prevailing party in this litigation. We dismiss the appeal, but deny appellant’s request.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On October 19, 2011, Shiloh was awarded a contract for transportation motor pool services at Fort Bragg, North Carolina, for \$2,298,985.95. The contract was for one base year and four option years. (Compl. at 1; R4, tab 1) The government exercised all four options. As a consequence of labor wage determination adjustments by the Department of Labor, Shiloh incurred increased costs of performance. Shiloh requested equitable adjustments corresponding to each of the four option years. Shiloh timely appealed the CO’s lack of final decision (deemed denial) to the Board on April 18, 2017, for a total of \$106,970.14.<sup>1</sup>

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<sup>1</sup> Shiloh submitted a complaint on July 28, 2017, for an amount of \$109,172.96. The original notice of appeal filed on April 18, 2017, was for \$106,970.14.

2. On February 22, 2018, the CO issued a final decision (COFD) agreeing to pay Shiloh \$109,172.96.<sup>2</sup>

3. On March 12, 2018, the government moved to dismiss for lack of jurisdiction, asserting that the COFD provided Shiloh the relief it requested, so there is no longer a dispute before the Board and the appeal is hence rendered moot. On April 11, 2018, appellant filed a response stating that it does not oppose the government's motion. Appellant also requested that in its dismissal the Board find that it was a prevailing party and that the government's position was not substantially justified, so that appellant may later submit an Equal Access to Justice Act, 5. U.S.C. § 504 (EAJA), application to recover its expenses related to the litigation of the above-captioned appeal.

4. At a conference call held by the Board on July 10, 2018, the parties expressed that the government had issued payment to Shiloh as described in the COFD, and that Shiloh had accepted the payment.

### DECISION

It is well established that a dispute becomes moot when all "relief sought has been granted or...the questions originally in controversy between the parties are no longer at issue." *Chapman Law Firm Co. v. Greenleaf Constr. Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007); *Lasmer Industries, Inc.*, ASBCA Nos. 56946, 56966, 11-1 BCA ¶ 34,671 at 170,801 (appeal dismissed as moot where CO granted all relief requested, extinguishing the dispute between the parties). Here, as undisputed by the parties, the government has granted the relief sought by Shiloh. The dispute before the Board is extinguished, thus rendering moot the above-captioned appeal.

Next, we examine appellant's request that the Board find that it was a prevailing party and that the government's position was not substantially justified, with the expectation of submitting an EAJA application to recover expenses related to the litigation of this appeal. We are aware of no legal basis for us to make this determination at this point and appellant has cited none. Moreover, it is well-established law that, in the absence of a judgment in a party's favor, it is not a prevailing party under EAJA. *Tech Projects, LLC*, ASBCA No. 58789, 16-1 BCA ¶ 36,443 at 177,616-17 (citing *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371, 1380 (Fed. Cir. 2002)).

Accordingly, we decline to provide appellant the relief it is requesting.

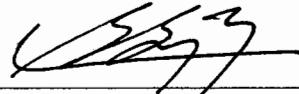
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<sup>2</sup> The final decision vacated an earlier COFD dated November 21, 2017, and included payment of Shiloh's claim under this appeal as well as payment of other claims not before the Board.

CONCLUSION

The appeal is dismissed as moot. Appellant's request that the Board find that it was a prevailing party and that the government's position was not substantially justified is denied.

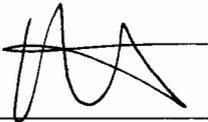
Dated: July 23, 2018



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LIS B. YOUNG  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



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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 No. 61134, Appeal of Shiloh Services, Inc., rendered in conformance with the Board's Charter.

Dated:

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