

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
John Shaw LLC d/b/a Shaw Building Maintenance) ASBCA No. 61379
)
Under Contract No. AAFES REZ-09-002-10-026)

APPEARANCE FOR THE APPELLANT: Mr. John Shaw, Jr.
Owner

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
CPT John M. McAdams III, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE
GOVERNMENT’S MOTION TO DISMISS CERTAIN CLAIMS

In 2010, the parties contracted for appellant to provide janitorial services at Eielson Air Force Base (R4, tab 1 at 3). The contract expired on May 31, 2013 (R4, tab 2 at 1). In March 2017, appellant presented to the contracting officer a certified claim for \$419,781.01, consisting of: (1) \$9,045.84 in equipment losses; (2) \$2,009.77 in Prompt Payment Act interest; and (3) \$408,725.40 in punitive damages (R4, tab 13 at 4). In August 2017, the contracting officer denied the claim (R4, tab 14 at 3). Appellant appealed, requesting, apparently: (1) \$9,045.84 in equipment losses; (2) \$2,009.77 in Prompt Payment Act interest; (3) \$408,725.40 in punitive damages; and, (4) \$1,882,002.00 in “missed opportunities” from contracts not obtained from third-parties, allegedly because of the government’s administration of its contract with appellant (compl. at 2; app. resp. at 7).

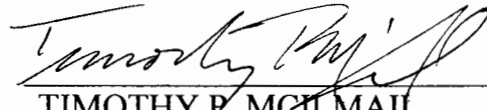
DECISION

The government moves for dismissal of appellant’s claims for punitive damages and “missed opportunities.” Regarding the latter, the attenuation of the connection between the government’s administration of the contract and appellant’s claim, essentially for monies allegedly lost under contracts that appellant did not enter with third-parties, is one for a type of consequential damages that are too remote and speculative to be recovered against the government. *See Simplicx*, ASBCA No. 52570, 06-1 BCA ¶ 33,240 at 164,727 (citing *CACI International, Inc.*, ASBCA Nos. 53058, 54110, 05-1 BCA ¶ 32,948 at 163,253). Consequently, appellant’s claim for \$1,882,002.00 in “missed opportunities” is dismissed. *See Garbage Disposal & Trash Services, Inc.*, ASBCA No. 43006, 93-1 BCA ¶ 25,465 at 126,831-32. In addition, we

have no authority to award punitive damages; consequently, appellant's claim for \$408,725.40 in punitive damages is dismissed for lack of subject matter jurisdiction. See *Consolidated Defense Corp.*, ASBCA No. 52315, 03-1 BCA ¶ 32,099 at 158,668.

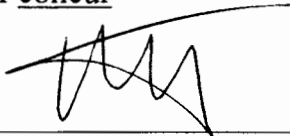
The government's motion is granted.

Dated: 8 March 2018



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 No. 61379, Appeal of John Shaw LLC d/b/a Shaw Building Maintenance, rendered in conformance with the Board's Charter.

Dated:

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