

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Satterfield & Pontikes Construction, Inc. ) ASBCA No. 62158  
 )  
Under Contract No. N69450-12-C-0754 )

APPEARANCE FOR THE APPELLANT: Douglas L. Patin, Esq.  
Bradley Arant Boult Cummings LLP  
Washington, DC

APPEARANCES FOR THE GOVERNMENT: Craig D. Jensen, Esq.  
Navy Chief Trial Attorney  
Matthew D. Bordelon, Esq.  
Trial Attorney

ORDER OF DISMISSAL

On August 27, 2019, appellant filed a Notice of Appeal predicated upon the “deemed denial” of its June 13, 2019 “Termination for Convenience claim and request for a final decision to the Contracting Officer [CO].” This was based upon the CO’s failure to issue a final decision within 60 days or to indicate when this would be done. The appeal was docketed as ASBCA No. 62158. By separate correspondence of August 27, 2019, Satterfield & Pontikes then notified the Board that it had located a copy of the CO’s response to the claim, and sought to withdraw the appeal while “reserv[ing] its rights to refile a Notice of Appeal at a later date.” The Board treats this as a motion to dismiss the appeal without prejudice.

The government was given the opportunity to respond, and initially indicated that it would agree to dismissal only if it were done with prejudice. Following further discussion, the parties on September 30, 2019, agreed to dismissal of the appeal without prejudice upon these terms:

Appellant dismisses without prejudice its deemed denial appeal of August 27, 2019. Appellant will not seek to reinstate this “deemed denial” appeal filed August 27, 2019[], or seek to file any other deemed denial “relating back” to that August 27, 2019 Notice of Appeal. This dismissal without prejudice does not affect Appellant’s right to appeal a contracting officer’s final decision regarding Appellant’s termination for convenience claim dated June 13, 2019, or a subsequent, independent deemed denial appeal of that claim.

We regard this as a joint motion to dismiss ASBCA No. 62158 without prejudice. The motion is granted in accordance with Board Rule 18(b), with the stipulation that appellant is not foreclosed from lodging a timely appeal of its June 13, 2019 claim under the circumstances stated above.

Dated: October 2, 2019



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REBA PAGE  
Administrative Judge  
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. 62158, Appeal of Satterfield & Pontikes Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

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PAULLA K. GATES-LEWIS  
Recorder, Armed Services  
Board of Contract Appeals