

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
GSC Construction, Inc. ) ASBCA No. 59046  
 )  
Under Contract No. W9126G-11-D-0061 )

APPEARANCE FOR THE APPELLANT: James S. DelSordo, Esq.  
Argus Legal, LLC  
Manassas, VA

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
Ronald J. Goodeyon, Esq.  
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Engineer Trial Attorneys  
U.S. Army Engineer District, Tulsa

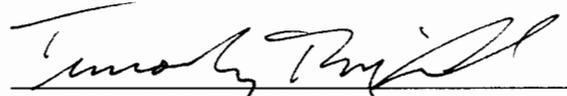
OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE  
GOVERNMENT’S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

The government requests that the appeal be dismissed because appellant failed to respond to discovery requests by 29 April 2016, as the Board had ordered. The Board subsequently ordered appellant to show cause why the appeal should not be dismissed for failure to comply with that order. Appellant responded that it complied with the Board’s order with respect to the production of the documents, but through oversight neglected timely to produce the written responses to the government’s requests. Appellant says that it has, since, provided those written responses. The government replies that it now has the documents and the written responses (both received late, it says), but continues to request dismissal, and, in the alternative, requests the exclusion of evidence. The government also complains about the form in which appellant produced the documents.

The government’s request for dismissal of the appeal is denied. Although the Board looks unfavorably upon appellant’s conduct, dismissal—a sanction universally

recognized as a last resort\*—is too harsh a remedy, particularly because the hearing of this appeal is more than six months off (23 January 2017).

Dated: 14 June 2016



TIMOTHY P. MCILMAIL

Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



MARK N. STEMLER

Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



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. 59046, Appeal of GSC Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN

Recorder, Armed Services  
Board of Contract Appeals

\* *The Public Warehousing Co.*, ASBCA No. 56022, 13 BCA ¶ 35,201 at 172,706.