

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Quality Trust, Inc.) ASBCA No. 62576
)
Under Contract No. FA2517-19-P-A083)

APPEARANCE FOR THE APPELLANT: Mr. Lawrence M. Ruiz
President

APPEARANCES FOR THE GOVERNMENT: Caryl A. Potter, III, Esq.
Air Force Deputy Chief Trial Attorney
Jason R. Smith, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE STINSON ON THE
GOVERNMENT’S MOTION TO DISMISS THE APPEAL AS MOOT

Appellant Quality Trust, Inc. (QTI), appeals from a contracting officer’s termination of QTI’s contract for default. The government requests dismissal of the appeal as moot. QTI filed no response to the government’s motion. We dismiss the appeal as moot.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF MOTION

1. The Department of the Air Force awarded Contract No. FA2517-19-P-A083 to QTI on September 28, 2019, valued at \$179,000. This contract was for “all labor, materials, transportation, disposal, and supervision to replace four (4) walk-in refrigerators and one (1) freezer at Aragon Dining Facility” at Peterson Air Force Base in Colorado under a single contract line item number. (R4, tab 3 at 1, 3). The contract incorporated Federal Acquisition Regulation (FAR) 52.212-4, CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS (OCT 2018), which incorporated FAR 52.233-1, DISPUTES (MAY 2014) by reference (*id.* at 11).

2. On March 9, 2020, the Air Force terminated QTI’s contract for cause (R4, tab 76 at 1, 77 at 1). QTI timely appealed the termination.

3. Appellant’s notice of appeal of its termination for cause included a “total amount in dispute” of approximately \$323,000. Appellant had not filed a certified claim for the \$323,000, and on October 29, 2020, the government filed a motion for partial dismissal. On January 12, 2021, appellant responded to the motion agreeing to the partial dismissal. Accordingly, by Order dated February 18, 2021, the Board

dismissed that portion of the appeal relating to the \$323,000 without prejudice. *Quality Trust, Inc.*, ASBCA No. 62576, 2021 WL 934902 (Feb. 18, 2021) (order of partial dismissal). The government’s termination for cause remained before the Board.

4. On May 15, 2024, the contracting officer issued Modification No. P00005, converting the “complete termination for cause . . . to a termination for convenience” (gov’t mot. ex.).

5. On May 16, 2024, the government filed a motion to dismiss this appeal as moot.

6. Appellant did not submit a response to the government’s motion, and by Order dated June 18, 2024, the Board informed the parties:

Board Rule 7(d) provides that a non-moving party has 30 days from receipt of a motion to file its response. Accordingly, appellant’s response to the government’s motion was due to be filed no later than June 17, 2024. The Recorder’s Office has no record of receiving a response from appellant. Appellant is ORDERED to file its response to the government’s motion no later than June 25, 2024.

(Bd. corr. ltr. dtd. June 25, 2024)

7. Appellant did not submit a response to the government’s motion as required by our June 18, 2024, Order.

DECISION

“An appeal should be dismissed as moot ‘[w]hen, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue.’” *Satterfield & Pontikes Constr., Inc.*, ASBCA Nos. 59980, 62301, 21-1 BCA ¶ 37,873 at 183,908 (quoting *Chapman Law Firm Co. v. Greenleaf Constr. Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007)).

The government’s motion states that “[a]s a result of such unconditional action by the Contracting Officer, there is no issue left for the Board to adjudicate and the appeal should be dismissed as moot” (gov’t mot. at 1). We agree. Because the government converted its termination of QTI’s contract for cause to one for the convenience of the government (SOF ¶ 4), there remains nothing for this Board to adjudicate. *Am. Best Constr. Co.*, ASBCA No. 62146, 19-1 BCA ¶ 37,450.

CONCLUSION

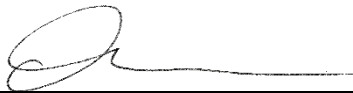
For these reasons, the motion to dismiss is granted and the appeal is dismissed as moot.

Dated: July 3, 2024



DAVID B. STINSON
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

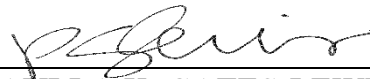
I concur



MICHAEL N. O'CONNELL
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. 62576, Appeal of Quality Trust, Inc., rendered in conformance with the Board's Charter.

Dated: July 3, 2024



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