

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Environmental Safety Consultants, Inc. ) ASBCA No. 51722  
)  
Under Contract No. N62470-95-C-2399 )

APPEARANCE FOR THE APPELLANT: Mr. Peter C. Nwogo  
President

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.  
Navy Chief Trial Attorney  
Ellen M. Evans, Esq.  
Trial Attorney  
Engineering Field Activity  
Chesapeake  
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE DICUS  
ON APPELLANT'S MOTION FOR RECONSIDERATION

This appeal was taken from a contracting officer's decision which terminated the above-captioned contract for default. Appellant seeks reconsideration of our 8 July 2002 decision which granted respondent's motion to dismiss a request for a monetary award of \$334,687.85 contained in appellant's initial and amended complaints. We found the attempt to assert a claim was not certified and that we, therefore, had no jurisdiction under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended. The amended complaint also contained new allegations concerning respondent's administration of the contract. We dismissed the amended complaint because the new allegations appeared to deal with the monetary claim, over which we had no jurisdiction, and because "any benefit from permitting the amendment is far outweighed by the confusion that would result from an attempt to sort out portions which might arguably apply to the termination for default." *Environmental Safety Consultants, Inc.*, ASBCA No. 51722, 02-2 BCA ¶ 31,951 at 157,849.

Appellant has submitted exhibits in support of its motion. Exhibit 2 is the "claim," a 7 April 1997 cost proposal in the amount of \$205,463.60 in response to a 20 March 1997 Navy request for proposals for PCO-01. It is unquestionably not certified. Thus, exhibit 2 supports our finding of "no jurisdiction."

Additionally, the 7 April 1997 cover letter begins "[t]his letter is response to your letter of 20 March 1997." The letter also refers to "additional costs associated with PCO-01." Exhibit 1 is a copy of a portion of a declaration by a Navy engineer. While the

declaration is not complete, it asserts that exhibit 2 was not a claim, but that, in any case, it was settled by bilateral Modification No. P00006. Exhibit 1 also includes a negotiation memorandum which identifies the same Navy engineer as the Navy negotiator and states that all items in appellant's 7 April 1997 letter were discussed and settled. Bilateral Modification No. P00006 (R4, tab 2) tracks exactly the wording recommended in the negotiation memorandum.

In summary, evidence submitted by appellant with its motion does not support its argument that we have jurisdiction over the claim assertions in its initial and amended complaint. Moreover, the motion and exhibits reinforce our conclusion that permitting the amended complaint to remain in the record would lead to confusion. After consideration of appellant's motion and supporting exhibits, we affirm our original conclusion that we have no jurisdiction.

Dated: 18 October 2002

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CARROLL C. DICUS, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
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. 51722, Appeal of Environmental Safety Consultants, Inc., rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals