

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
AquaTerra Contracting, Inc.) ASBCA Nos. 55194, 55196
)
Under Contract No. DACW27-02-C-0005)

APPEARANCES FOR THE APPELLANT: James F. Butler III, Esq.
Karl Dix, Jr., Esq.
Smith, Currie & Hancock LLP
Atlanta, GA

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
R. Dale Holmes, Esq.
District Counsel
Deena G. Braunstein, Esq.
Engineer Trial Attorney
U.S. Army Engineer District,
Louisville

ORDER OF DISMISSAL

The government moves to dismiss the captioned appeals with prejudice pursuant to the parties' bilateral Modification A00016 dated 23 March 2006 and their Memorandum of Agreement dated 9 February 2006, incorporated therein. Appellant opposes on the ground that the government is withholding \$50,000 of the agreed settlement amount and that "this matter should be stayed, rather than dismissed, pending receipt by Appellant of the full settlement amount." The Government replies that the \$50,000 is a "set-off pending resolution of an issue on another contract between the parties."

In seeking a stay pending receipt of the \$50,000, appellant is not repudiating the settlement agreement, and if the government is failing wrongfully to pay the full agreed amount, appellant may submit a claim to the contracting officer for breach of the agreement. Any such claim, however, would not be one of the claims on which the captioned appeals were taken. Therefore, in accordance with the parties' settlement agreement we dismiss the captioned appeals with prejudice.

Dated: 27 June 2006

MONROE E. FREEMAN, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
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 Nos. 55194, 55196, Appeals of AquaTerra Contracting, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals