

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Eagle Alliance ) ASBCA No. 56315  
 )  
Under Contract No. DCA904-01-D-2101 )

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OPINION BY ADMINISTRATIVE JUDGE STEMLER

This matter comes before the Board on appellant's "Motion for Confirmation of Jurisdiction." The government has concurred in appellant's request for confirmation of jurisdiction (letter of 3 March 2008).

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

On 31 July 2001, the National Security Agency/Central Security Service (NSA) awarded Contract No. DCA904-01-D-2101<sup>1</sup> to Eagle Alliance (appellant).<sup>2</sup> On 21 December 2006, appellant filed a claim for approximately \$187.5 million.<sup>3</sup> On 15 November 2007, the contracting officer issued a final decision, denying the claim in its entirety. The contracting officer's decision advised appellant of its appeal rights to

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<sup>1</sup> The contract number has been variously listed as DCA904-01-D-2101 and MDA904-01-D-2101.

<sup>2</sup> No Rule 4 has been filed to date. Our Statement of Facts draws from the uncontested filings to date, primarily the Notice of Appeal and exhibits thereto, and the motion papers and exhibits thereto.

<sup>3</sup> The claim appears to have been amended on several occasions thereafter.

“the agency board of contract appeals” or the U.S. Court of Federal Claims (Notice of Appeal (NOA) ex. 1 at 67). On 11 February 2008, appellant filed a timely NOA with this Board.

We are informed from the motion papers that simultaneously with the appeal to the ASBCA, appellant filed a NOA with the Civilian Board of Contract Appeals (CBCA) (docketed as CBCA No. 1075).<sup>4</sup> On 13 February 2008, the CBCA stayed proceedings in CBCA No. 1075 until 13 May 2008, pending resolution of the jurisdiction issue by the ASBCA. (App. mot., ex. A) By date of 19 February 2008, the government filed a Motion to Dismiss for Lack of Jurisdiction at the CBCA, asserting that jurisdiction was proper at the ASBCA. Government counsel simultaneously provided a copy of its motion to the CBCA to us.

On 3 March 2008, appellant filed the instant unopposed motion.

### DECISION

We conclude that jurisdiction over CDA appeals to a Board of Contract Appeals, from decisions of contracting officers of the NSA, properly lies with the ASBCA.

The CDA § 607(d) provides that jurisdiction over appeals to a Board of Contract Appeals from decisions of Department of Defense contracting officers properly lies with the ASBCA. NSA is a part of the Department of Defense. DoD Directive (DODD) 5100.20, § 2.1<sup>5</sup> provides:

. . . [T]he National Security Agency is a separately organized agency within the Department of Defense, under the direction, supervision, funding, maintenance and operation of the Secretary of Defense.

(*See also* DODD 5100.23, § 2 (DoD policies, regulations and procedures govern NSA’s operations)) The National Security Agency Act of 1959 (Pub. L. No. 86-36) establishes that the Director of the NSA may take certain actions on behalf of the Secretary of Defense. *See* 50 U.S.C. § 402 note. Prior to the creation of the CBCA, the ASBCA decided NSA’s CDA appeals. *See, e.g., Guardian Moving and Storage Co., ASBCA No. 54479, 04-2 BCA ¶ 32,753, aff’d in part, rev’d in part on other grounds, 421 F.3d 1268 (Fed. Cir. 2005).* We are not aware of any provision in the legislation

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<sup>4</sup> Appellant’s motion papers state that the “prophylactic” appeal to the CBCA was taken because, despite appellant’s belief to the contrary, a staff member at the CBCA’s Recorder’s office had suggested to appellant that the CBCA had Contract Disputes Act (CDA), 41 U.S.C. §§ 601 *et seq.*, jurisdiction over NSA appeals.

<sup>5</sup> DODDs are available at [www.dtic.mil/whs/directives/corres/dir.html](http://www.dtic.mil/whs/directives/corres/dir.html)

creating the CBCA (National Defense Authorization Act, Pub. L. No. 109-163) that alters our jurisdiction over NSA appeals.

To the best of our knowledge, there is no authority for the proposition that NSA is anything other than a component of the Department of Defense.

CONCLUSION

We conclude that the ASBCA properly has subject matter jurisdiction over this appeal.

Dated: 18 March 2008

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

I concur

I concur

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

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OWEN C. WILSON  
Administrative Judge  
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. 56315, Appeal of Eagle Alliance, rendered in conformance with the Board's Charter.

Dated:

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