

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Cameron Bell Corporation d/b/a) ASBCA No. 61856
Gov Solutions Group (GovSG))
)
Under Contract No. N00178-14-D-7651)

APPEARANCE FOR THE APPELLANT: Michael A. Killham, Esq.
Lakewood, CA

APPEARANCES FOR THE GOVERNMENT: Craig D. Jensen, Esq.
Navy Chief Trial Attorney
Diana L. King, Esq.
Eric D. Flores, Esq.
Trial Attorneys
Space and Naval Warfare Systems, Pacific
San Diego, CA

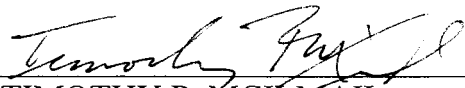
OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE
GOVERNMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

The government moves to dismiss for lack of jurisdiction appellant's appeal from a contracting officer's final decision regarding appellant's Contract Performance Assessment Reporting System (CPARS) rating. Appellant requests (1) that the Board return this matter to the government "with guidance indicating that" the government should have rated appellant "Satisfactory, or better"; (2) breach of contract damages; (3) "a declaratory judgment to assist the agency, on remand, to adjust the identified concerns"; and (4) "such other relief as the Board deems appropriate" (compl. at 3-5). At least in connection with the "other relief" sought, we can assess whether the contracting officer acted reasonably in rendering the disputed performance rating or was arbitrary and capricious and abused his discretion. *See Versar, Inc.*, ASBCA No. 56857, 10-1 BCA ¶ 34,437 at 169,959. In other words, we may determine whether the government acted arbitrarily and capriciously in assigning an inaccurate and unfair performance evaluation. *MicroTechnologies, LLC*, ASBCA Nos. 59911, 59912, 16-1 BCA ¶ 36,354 at 177,236. We also have jurisdiction to determine whether the government breached its implied contractual duty of good faith and fair dealing, an issue that appellant raised in its claim to the contracting officer (R4, tab 1a at 1). *Versar*, 10-1 BCA ¶ 34,437 at 169,959. Although we do not have jurisdiction to grant specific performance or injunctive relief, and therefore cannot order the government to revise a CPARS rating, we may remand to require the contracting officer to follow applicable regulations and provide appellant a fair and accurate

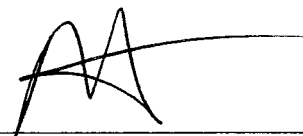
performance evaluation. *PROTEC GmbH*, ASBCA No. 61161 *et al.*, 18-1 BCA ¶ 37,064 at 180,419-20.

In addition, we do not have jurisdiction to award monetary damages here, because appellant's claim does not request any such damages. *See Hensel Phelps Construction Co.*, ASBCA No. 61517, 18-1 BCA ¶ 37,101 at 180,588. Accordingly, we grant in part the government's motion to dismiss for lack of jurisdiction to the extent that appellant asks the Board to order the government to change its rating and award monetary damages. Otherwise, the motion to dismiss is denied.

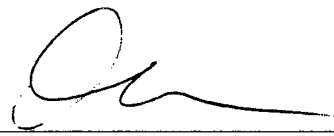
Dated: May 1, 2019


TIMOTHY P. MCELMAIL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur


RICHARD SHACKLEFORD
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur


OWEN C. WILSON
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. 61856, Appeal of Cameron Bell Corporation d/b/a Gov Solutions Group (GovSG), rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals