

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Phoenix Hawk Construction Company ) ASBCA No. 60987  
 )  
Under Contract No. W56JSL-12-P-2162 )


APPEARANCE FOR THE APPELLANT: Mr. Aghasherin Ahmady  
President and CEO

APPEARANCES FOR THE GOVERNMENT: Scott N. Flesch, Esq.  
Army Chief Trial Attorney  
Dana J. Chase, Esq.  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TIMOTHY P. MCILMAIL

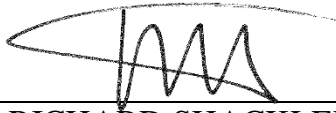
On June 4, 2020, the government filed a notice of its affirmative defenses in this appeal, in which it included that the appeal was untimely under 41 U.S.C. § 7104(a), which requires that a contractor must file a notice of appeal with the Board within 90 days from the receipt of a contracting officer’s final decision. On June 8, 2020, the Board ordered that, no later than June 26, 2020, appellant respond to the government’s June 4, 2020 suggestion of no jurisdiction. Appellant never filed any such response. On July 27, 2020, the government requested that the Board dismiss the appeal for failure to prosecute. On July 29, 2020, the Board ordered that, no later than August 7, 2020, appellant (1) respond to the government’s June 4, 2020 suggestion of no jurisdiction; (2) respond to the government’s July 27, 2020 motion to dismiss for failure to prosecute; and (3) show cause why the appeal should not be dismissed for failure to comply with the Board’s June 8, 2020 order. Again, appellant never responded. Appellant has deliberately ignored the Board’s orders, and has given no consideration to the Board’s attempts to efficiently process the appeal. Accordingly, the appeal is dismissed with prejudice for failure to prosecute the appeal or comply with Board orders under Board Rule 17. *See Courtney Ake*, ASBCA No. 61610, 2018 WL 6578658 (Nov. 26, 2018) (citing cases).

Dated: December 10, 2020

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

(Signatures continued)

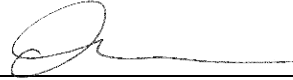
I concur



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

I concur



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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. 60987, Appeal of Phoenix Hawk Construction Company, rendered in conformance with the Board's Charter.

Dated: December 10, 2020



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