

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Golden Build Company) ASBCA No. 62294
)
Under Contract No. W91B4M-09-P-7340)

APPEARANCE FOR THE APPELLANT: Mr. Mahmood Nezam
Chief Executive Officer

APPEARANCES FOR THE GOVERNMENT: Scott N. Flesch, Esq.
Army Chief Trial Attorney
LTC Stephen M. Hernandez, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PAUL
ON THE GOVERNMENT’S MOTION TO DISMISS

This was a contract for the performance of services at a Forward Operating Base (FOB) in Afghanistan. The Contract Disputes Act (CDA), 41 U.S.C. §§7101-7109, is applicable. The contract was never performed, yet appellant Golden Build Company (GBC) purports that it has filed a claim. The government moves to dismiss the appeal for lack of jurisdiction.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION¹

1. On September 15, 2009, the Army and GBC entered into Contract No. W91B4M-09-P-7340 (R4, tab 1 at 1-2). The statement of work (SOW) stated the following “[] REQUIREMENT: This Operations and Maintenance (O&M) contract, including cleaning services for latrines/showers and other common facilities/spaces, is for the [Afghan National Army] [(J)ANA] Forward Operating Base (FOB) Sheberghan. The contractor is to provide maintenance, servicing and cleaning of facilities and utilities that support the ANA FOB.” (R4, tab 2 at 1)

2. On October 5, 2009, the CO executed Modification No. P00001 which removed the possibility of issuing contract options (R4, tab 5).²

3. On January 22, 2010, the CO notified GBC that “there [was] nothing at the location for you to do. This is because no men are there for you to support.” (R4, tab 6)

¹ We cite these facts solely for purposes of resolving the motion.

² Modification No. P00002 transferred the administration office of the contract (R4, tab 7).

4. On August 26, 2010, the CO executed Modification No. P00003 which decreased the contractual amount from \$119,906 to \$617 (R4, tab 8). GBC signed the Modification on August 27, 2010 (R4, tab 9).

5. On July 29, 2013, and once again on June 14, 2014, the Army forwarded release of claims letters to GBC (R4, tabs 11, 13). On July 17, 2014 the Army forwarded an email to GBC, asking whether the contract had ever been performed (R4, tab 15). There is no record evidence demonstrating that GBC ever responded to any of these three communications (R4, *passim*).

6. On August 21, 2014, five years after the contract was executed, the CO wrote a memorandum of record, asserting that the total funded amount of the contract would be de-obligated (R4, tab 17). This contractual action was effectuated on August 23, 2014 (gov't ex. 1).

7. There is no record evidence demonstrating that the CO ever received a claim regarding this unperformed contract; accordingly, the CO never issued a final decision under this contract (R4, *passim*). Nevertheless, GBC filed a notice of appeal which was docketed as ASBCA No. 62294.

DECISION

Upon receiving the notice of appeal, the Army filed a motion to dismiss for lack of jurisdiction. GBC has not filed a substantive response to this motion, which is supported by sworn declaration of key government personnel.

It is axiomatic that, in order for this Board to review an appeal under the CDA, there must be an underlying claim. Here, no such claim exists. Therefore, we must grant the government's motion to dismiss for lack of jurisdiction. *See Parsons Evergreene, L.L.C.*, ASBCA No. 57794, 12-2 BCA ¶ 35092 at 122,346.

CONCLUSION

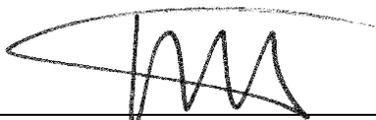
The appeal is dismissed for lack of jurisdiction.

Dated: July 9, 2020



MICHAEL T. PAUL
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. 62294, Appeal of Golden Build Company, rendered in conformance with the Board's Charter.

Dated: July 9, 2020



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