

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Malika and Refa Environmental Solutions) ASBCA No. 63960
)
Under Contract No. W91B4N-17-P-5006)

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OPINION BY ADMINISTRATIVE JUDGE STINSON ON THE
GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

Appellant Malika and Refa Environmental Solutions (M&R ES) appeals a contracting officer’s May 29, 2024, final decision denying, in part, appellant’s termination settlement proposal seeking \$2,708,262 (R4, tab 66 at 5).¹ On June 27, 2025, the government filed a motion to dismiss the appeal alleging that a second company, M & R USA, Inc. (M&R USA), is actually prosecuting the appeal and is not the real party in interest (gov’t mot. at 1). The government’s motion also requested a stay of proceedings, which appellant did not oppose, and the Board, by Order dated July 16, 2025, granted the request, suspending discovery. For the reasons stated below, we deny the government’s motion.

¹ Rule 4 citations are to the government’s supplemental Rule 4 file submitted on September 30, 2025.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

M&R ES Solicitation and Contract

1. On January 27, 2017, M&R ES submitted a proposal to Solicitation No. W91B4N-17-Q-0003 for solid waste disposal; the proposal was signed by Ahmad Alex Momand, with the title of “Co-Founder” (R4, tab 76 at 1, 3).² On January 30, 2017, the government recorded verification of M&R ES as a women-owned business concern under Federal Acquisition Regulation (FAR) 52.204-5, WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (OCT 2014) and FAR 52.212-3, OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (APR 2016) (R4, tab 78 at 2, 7).³

2. On February 6, 2017, the Army Regional Contracting Center-East, Afghanistan (RCC-A), accepted the proposal submitted by M&R ES and awarded it Contract No. W91B4N-17-P-5006 (R4, tab 1 at 1). Standard Form 1449 identified the contractor as:

MALIKA AND REFA ENVIRONMENTAL
SOLUTIONS
KARTE NOW DISTRICT 16
KABUL, AFGHANISTAN
AHMAD WALI MOMAND

(*Id.*)

Contract Termination

3. On June 5, 2021, the government issued Modification No. P0008, terminating the contract for convenience pursuant to FAR 52.212-4 (R4, tab 33 at 1). Ahmad Alex Momand signed the modification as “Co-Founder” on behalf of appellant M&R ES (R4, tab 32 at 1). Mr. Momand signed several other modifications on behalf

² Mr. Momand is sometimes also referred to in record documents as Ahmad Wali Momand ((R4, tab 6 at 1; tab 27 at 1; tab 53 at 1).

³ The government cites to various documents in support of the proposition that appellant is no longer a woman-owned business (gov’t mot. at 2 n.1, 8-9, 14) and questions whether M&R ES improperly continued to hold itself out as a women-owned concern (gov’t mot. at 11 n.8). However, the government also states that it does not address this issue in detail because it is not “directly relevant to this motion to dismiss for lack of jurisdiction” (*id.*). We agree and, accordingly, do not address this issue in our decision.

of M&R ES (R4, tab 6 at 1; tab 27 at 1; tab 53 at 1), two of which identified Mr. Momand as co-founder of M&R ES (R4, tab 6 at 1; tab 53 at 1).

M&R USA Contract

4. M&R USA was organized under the General Corporate Law of California on May 15, 2021, with a street and mailing address listed as 3221 Lookout Point Loop, Discovery Bay, CA (app. supp. R4, tab 90 at 2). On August 24, 2021, the government awarded M&R USA its own Contract No. W91B4N-21-P-2025 for the supply of various items in support of Operation Allies Refugee, Noncombatant Evacuation Operations in Afghanistan (gov't reply ex. A (Attachment A at 1); aff. of LTC Jay A. Parker ¶ 5). Both parties signed the contract on September 21, 2021 (gov't reply ex. A at 3 (Attachment A at 1). In Block 17a of the contract, Ahmad W. Momand was identified under the address of M&R USA, and it appears from that document that Mr. Momand signed the contract as "Contracts Manager" (gov. reply ex. A (attachment A at 1)).

M&R ES Termination Settlement Proposal

5. On March 3, 2022, M&R ES submitted a termination settlement proposal and certification of claims signed by Ahmad Fawad Nikzad as "CFO" (R4, tab 68 at 1). The proposal was set forth on the letterhead of "M&R Environmental Solutions" and submitted via email as follows:

To: United States Army Regional Contracting Center
OTH Qatar
Contracting Officer, SSG Cusic

...

From: Ahmad Fawad Nikzad
CFO, Malika and Refa Environmental Solutions

(*Id.*)

Contracting Officer Final Decision

6. By letter dated May 29, 2024, the contracting officer issued a final decision granting in part, and denying in part, appellant's termination settlement proposal (R4, tab 66). The final decision was addressed to:

Malika and Refa Environmental Solutions
Attn: Mr. Ahmad Fawad Nikzad

Karte Now District 16
Kabul, Afghanistan

(*Id.* at 1)

Notice of Appeal

7. By email dated August 15, 2024, Kelly M. Boppe, Esq., of Venable LLP, forwarded to the Board a notice of appeal with a subject line “Appeal of Malika and Refa Environmental Solutions, Under Contract No. W91B4N-17-P-5006.” The attached notice of appeal was signed by Paul A. Debolt, Esq., Venable LLP, with a copy sent via email to “Suphakit Areeyat, Contracting Officer” and a subject line: “Appeal of Malika and Refa Environmental Solutions Under Contract No. W91B4N-17-P-5006.” The notice of appeal stated:

In accordance with Contract Disputes Act, 41 U.S.C.
§ 7100, et seq. (“CDA”), and Rule 1(b) of the Rules of the
Armed Services Board of Contract Appeals (“ASBCA”),
Malika and Refa Environmental Solutions (“M&R”),
appeals the Contracting Officer’s final decision dated May
29, 2024, a copy of which is enclosed herein.

SAM.gov Registration

8. On September 9, 2016, M&R ES was registered on SAM.gov under Commercial and Government Entity (CAGE) Code SQR62 with a physical address of Karte Now, Kabul City, Afghanistan, and a mailing address of Karte Now, Kabul City, Kabul 09356, Afghanistan (R4, tab 74 at 1).

9. On August 29, 2021, M&R USA was registered on SAM.gov under CAGE Code 959M9 with a physical address of 3221 Lookout Point Loop, Discovery Bay, California (R4, tab 80 at 1).

10. The SAM.gov registration for M&R ES under CAGE Code SQR62 expired on September 21, 2024 (R4, tab 86).

11. On March 11, 2025, M&R USA renewed its SAM.gov registration (R4, tabs 88 at 1; 89 at 1).

M&R ES Response to Government Interrogatories

12. During discovery in the subject appeal, the government submitted to M&R ES Interrogatory No. 19, asking M&R ES to “[i]dentify the current state and country

of incorporation, and the corporate form of the entity, of ‘Malika and Refa Environmental Solutions’” (gov’t mot. ex. G-1 at 14), to which M&R ES responded, “M & R USA Inc is incorporated in California and has current registration” (gov’t mot. ex. G-2 at 12). Appellant’s certification of answers to the government’s interrogatories was signed by “Ahmad wali Momand, CEO at Malika and Refa Environmental Solutions” (gov’t mot. ex. G-4 at 23). Mr. Momand certified “under penalty of perjury that the facts contained in the foregoing Supplemental Responses are true and correct to the best of my information, knowledge, and belief” (*id.*).

13. The government requested additional information regarding appellant’s response to Interrogatory No. 19, to which M&R ES stated that M&R USA was established at the request of the government solely for the purpose of receiving payments from the United States following the Taliban takeover in Afghanistan, and that the companies were two separate entities (gov’t mot. ex. G-4 at 17; app. resp. at 6-7). Appellant also stated that M&R ES “is registered in Afghanistan” and “is still in business” (gov’t mot. ex. G-4 at 17-19 (supp. response to interrogatory nos. 19-20)).

Declaration of Mr. Momand

14. In support of its response in opposition to the government’s motion to dismiss, M&R ES submitted a declaration of Ahmad “Alex” Wali Momand, stating that he is “the Chief Executive Officer” of M&R ES, a position he has held “since 2012” (decl. of Ahmad Wali Momand ¶ 1). Mr. Momand states also that M&R ES – “the contractor-appellant” – “is an existing corporate entity duly organized in Afghanistan and has its registered principal office located at Qala Fatullah, Kabul, Afghanistan,” and has three officers and 20 employees (decl. of Ahmad Wali Momand ¶¶ 3-5, 7). Mr. Momand’s declaration was affirmed “under penalty of perjury” that the facts as stated were “true and correct to the best of [his] knowledge and belief” (*id.* at summation).

Board Request for Additional Documents

15. By Order dated August 28, 2025, the Board directed the parties to supplement the Rule 4 file with additional documents concerning (1) M&R USA’s articles of incorporation or other formation documents filed or otherwise available in the United States and (2) articles of incorporation or other “formation documents” regarding both companies that the government can access through the JCCS portal. On September 26, 2025, and September 29, 2025, the parties submitted additional documents relevant to both companies (app. supp. R4, tab 90; R4, tabs 90-97).

DECISION

I. Burden of Proof

As proponent of the Board's jurisdiction, M&R ES "bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." *Northrop Grumman Corp.*, ASBCA No. 62165, 21-1 BCA ¶ 37,922 at 184,170 (citations omitted). "Pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-09, our jurisdiction requires 'both a valid claim and a contracting officer's final decision on that claim.'" *Id.*

II. Contentions of the Parties

The government argues that M&R USA, and not M&R ES, is the entity actually "prosecuting this appeal," and, therefore, M&R USA is not the real party (gov't mot. at 1). The government also argues that M&R USA was not a party to the subject Contract No. W91B4N-17-P-5006, did not enter into a novation agreement or an assignment of claims with M&R ES, and "is neither a successor, predecessor, nor owner of the rightful contractor" M&R ES (*id.*).⁴ As such, the Board lacks jurisdiction to consider this appeal (*id.*). M&R ES responds, stating that "M&R ES still exists and is the party pursuing this appeal" (app. resp. at 1).

III. The Board has Jurisdiction to Consider this Appeal

The government's motion to dismiss for lack of jurisdiction is based upon arguments regarding the real party in interest. At its core, the government's motion is based upon the *assumption* that M&R USA is the real party bringing this appeal, presumably based upon the fact that, for reasons not entirely clear, M&R ES, in response to an interrogatory requesting it "[i]dentify the current state and country of incorporation, and the corporate form of the entity, of 'Malika and Refa Environmental Solutions,'" M&R ES responded, "M & R USA Inc is incorporated in California and has current registration" (SOF ¶ 12).⁵

⁴ Appellant does not dispute that M&R USA was not a party to the subject contract, did not enter into a novation or an assignment of claims with M&R ES, and is neither a successor nor rightful owner of M&R ES (app. resp. at 13-14).

⁵ We note that M&R ES takes the position in its interrogatory response that M&R USA was established at the request of the government solely for the purpose of receiving payments from the United States following Taliban takeover" (SOF ¶ 13). The government challenges appellant's assertion (gov't reply at 6) and states, via the affidavit of LTC Parker, that the government awarded M&R USA a contract in August 2021, six months before submission by M&R ES of its termination settlement proposal (SOF ¶¶ 4-5). However, we do not perceive the factual

The government argues that “appellant has not provided any information regarding the current existence of Malika and Refa Environmental Solutions, [and] instead *appears* to be holding forth M & R USA Inc as its current corporate form” (gov’t mot. at 18) (emphasis added). In response, appellant proffered the declaration of Mr. Momand, CEO, which states M&R ES “is an existing corporate entity duly organized in Afghanistan and has its registered principal office located at Qala Fatullah, Kabul, Afghanistan” (SOF ¶ 14). Although the government hints or suggests that M&R ES may no longer be in business, it has offered no definitive proof to support such an allegation. In contrast, M&R ES has offered sworn statements declaring that M&R ES remains in business (*id.*).⁶

The government argues that Mr. Momand’s declaration is “self-serving” and “does not establish either that M&R ES is prosecuting this appeal or that M&R USA can collect payment for M&R ES” (gov’t reply at 1-3). The government’s argument misses the mark. Appellant has produced a declaration stating unequivocally that M&R ES remains in business. Simply casting Mr. Momand’s declaration as “self-serving” does not in any way devalue it as evidence of the continued existence of M&R ES, a statement to which Mr. Momand has sworn is correct “under penalty of perjury” (SOF ¶ 14). *Surplus Tire Sales*, ASBCA No. 10019, 1964 BCA ¶ 4437 at 21,379. Indeed, Mr. Momand likewise certified, under penalty of perjury, appellant’s answers to interrogatories, attesting to the existence of M&R ES (SOF ¶¶ 12-13). Sworn statements of Mr. Momand certainly are more compelling and reliable when balanced against the government’s arguments based upon innuendo.

Regarding the government’s demand that M&R ES affirmatively state that it is the party prosecuting this appeal, the record establishes that the notice of appeal was filed by counsel on behalf of M&R ES (SOF ¶ 7). Although appellant’s response to Interrogatory No. 19 appears to have been the catalyst for the government’s motion, as well as the government’s conjecture that appellant “appears to be holding forth M & R USA Inc as its current corporate form” (gov’t mot. at 18), appellant’s subsequent clarification of its response to Interrogatory No. 19 (SOF ¶ 13), as well as the

inconsistency regarding the establishment and purpose of M&R USA as impacting our resolution of the jurisdictional issue raised in the government’s motion to dismiss as to whether M&R ES is the appellant in this appeal.

⁶ Were it established that M&R ES was defunct or otherwise no longer a viable concern, M&R ES may lack standing to prosecute the appeal before the Board. *Triad Microsystems, Inc.*, ASBCA Nos. 52726, 52839, 01-2 BCA ¶ 31,438 at 155,263. Depending upon the laws of the governmental entity where the dissolved company was organized, it is possible the dissolved company may “continue[] to exist with the power to prosecute or defend proceedings in its name.” *Bulova Techs. Ordnance Sys. LLC*, ASBCA No. 59089, 18-1 BCA ¶ 37,183 at 180,981.

declaration of Mr. Momand (SOF ¶ 14), establish that M&R ES is the party prosecuting this appeal.

Seemingly grasping at straws, the government argues in its reply brief that it “does not concur” that M&R ES brought this appeal, and “cannot ascertain” whether M&R ES or M&R USA submitted the certified claim and whether the contracting officer issued the final decision to M&R ES or M&R USA because appellant has not provided any business records or evidence of its existence (gov’t reply at 8-9). Record evidence establishes, however, that the claim, the final decision, and the notice of appeal, all were issued to or sent on behalf of M&R ES, not M&R USA. Specifically, the claim was submitted on behalf of “M&R Environmental Solutions” with a certification signed by Ahmad Fawad Nikzad as “CFO” and sent to contracting officer SSG Cusic via email from Mr. Nikzad (SOF ¶ 5). The final decision was addressed to “Malika and Refa Environmental Solutions, Attn: Mr. Ahmad Fawad Nikzad[,] Karte Now District 16[,] Kabul, Afghanistan” (SOF ¶ 6). The notice of appeal was sent via email dated August 15, 2024, from Venable LLP on behalf “Malika and Refa Environmental Solutions, Under Contract No. W91B4N-17-P-5006,” with an email copy to “Suphakit Areeyat, Contracting Officer” (SOF ¶ 7).

We know of no rule or jurisdictional requirement, nor has the government offered any citation to support such a proposition, that a party who files an appeal with the Board must also affirmatively state that it is the party prosecuting the appeal – a proposition that is seemingly self-evident based upon the claim, the final decision, and the notice of appeal. What is certain is that M&R ES submitted a valid claim, received a contracting officer final decision on that valid claim, and filed a timely notice of appeal, thus meeting the requirements of the CDA. *Northrop Grumman*, 21-1 BCA ¶ 37,922 at 184,170 (“our jurisdiction requires ‘both a valid claim and a contracting officer’s final decision on that claim’”) (quoting *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1327 (Fed. Cir. 2010)).

As to whether “M&R USA can collect payment for M&R ES” (gov’t reply at 3), this becomes an issue only if it is determined that appellant is entitled to payment on its termination cost proposal. The issue of payment, however, does not factor into a determination, in the first instance, of whether M&R ES, having submitted the claim, received a final decision, and having lodged this appeal, is the proper party prosecuting the appeal.

CONCLUSION

For the foregoing reasons, the government's motion to dismiss is denied. No later than January 5, 2026, the parties shall file a joint status report setting forth a revised prehearing schedule addressing each of the deadlines set forth in the Board's January 16, 2025, Scheduling Order, including three suggested dates for the five-day hearing at the Board on entitlement only.

Dated: December 8, 2025



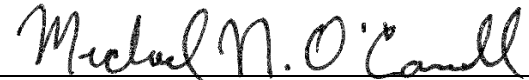
DAVID B. STINSON
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



MICHAEL N. O'CONNELL
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. 63960, Appeal of Malika and Refa Environmental Solutions, rendered in conformance with the Board's Charter.

Dated: December 9, 2025



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