



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: August 22, 2017

CBCA 5803

EAGLE MECHANICAL, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Daniel Hail, President of Eagle Mechanical, Inc., Indianapolis, IN, appearing for Appellant.

Robert W. Foltman, Office of Regional Counsel, General Services Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **DRUMMOND**, **SULLIVAN**, and **BEARDSLEY**.

SULLIVAN, Board Judge.

In response to a show cause order issued by the Board, the parties have acknowledged that appellant, Eagle Mechanical, Inc., was a subcontractor on a contract with respondent, General Services Administration (GSA), and that an appeal must be filed by the prime contractor. The Board dismisses the appeal for lack of jurisdiction.

On July 27, 2017, the Board docketed an appeal filed by Eagle Mechanical from a contracting officer's decision. That decision was addressed to Valiant Construction, LLC, and described Eagle Mechanical as a subcontractor to Valiant Construction. Eagle Mechanical explains in its notice of appeal that it sought the increased costs of refrigerant piping installed in the federal building and courthouse in Indianapolis, Indiana.

The Board's jurisdiction to entertain appeals involving contract disputes derives from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012). The CDA provides the Board with jurisdiction to entertain appeals arising out of disputes involving contracts between contractors and executive branch agencies. *Id.* § 7102(a). The CDA does not confer upon the Board jurisdiction to consider appeals brought by subcontractors who do not have a contract and, therefore, are not in privity with the Federal Government. *Id.*; *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1550 (Fed. Cir. 1983); *BPI Management Inc. v. Department of Housing & Urban Development*, CBCA 1894, 10-2 BCA ¶ 34,495, at 170,142. However, a prime contractor may appeal on behalf of a subcontractor, in the nature of a pass-through suit, for costs incurred by the subcontractor. *E.R. Mitchell Construction Co. v. Danzig*, 175 F.3d 1369, 1370 (Fed. Cir. 1999).

The Board issued a show cause order to determine whether it had jurisdiction to consider this matter. In response to this order, both parties confirmed that Eagle Mechanical was a subcontractor to Valiant Construction and was not in privity with the agency. GSA further noted that Eagle Mechanical had not established that Valiant Construction had authorized Eagle Mechanical to appeal on its behalf. Eagle Mechanical acknowledged that a proper appeal would have to proceed through Valiant Construction since that entity was the prime contractor with GSA. Based upon these acknowledgments, the Board lacks jurisdiction over the current appeal filed by Eagle Mechanical.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

MARIAN E. SULLIVAN
Board Judge

We concur:

JEROME M. DRUMMOND
Board Judge

ERICA S. BEARDSLEY
Board Judge