



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: December 3, 2007

CBCA 641

PACIFIC LEGACY, INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Robert J. Jackson, Chief Executive Officer of Pacific Legacy, Inc., Santa Cruz, CA, appearing for appellant.

Maria Giatrakis, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

Before Board Judges **PARKER**, **STERN**, and **GOODMAN**.

PARKER, Board Judge.

The Department of Agriculture moves to dismiss for lack of jurisdiction an appeal filed by Pacific Legacy, Inc. in connection with a contract to perform a cultural resource survey in the Plumas National Forest in Northern California. For the reasons discussed below, we grant the Department's motion and dismiss the appeal.

Findings of Fact

The following facts are undisputed. Pacific Legacy was awarded the survey contract in October 2006. During performance, a dispute arose as to whether existing conditions permitted Pacific Legacy to safely access some of the Government land to be surveyed. Pacific Legacy maintained that it could not safely continue to perform the contract;

Agriculture disagreed and urged Pacific Legacy to continue performance. Ultimately, the agency issued a cure notice to Pacific Legacy stating that Pacific Legacy's failure to make progress was endangering performance of the contract and the agency was considering terminating the contract. Pacific Legacy was given ten days to cure the condition outlined in the letter. Appeal File, Exhibit 13.

The parties were able to resolve their differences, the contract was completed on time, and appellant was paid in full for its work. In signing the contract release for acceptance of final payment, however, Pacific Legacy wrote the following reservation:

Pacific Legacy requests a written rescission of a Cure Notice issued by Charlotte Carter, Contracting Officer for the Plumas National Forest, on October 30, 2006. Pacific Legacy reserves the right to pursue this request under the implementing regulations for the Contract Disputes Act of 1978, and we reserve the right to any remedies that arise from an appeal process or resulting from Government decisions rendered under the Equal Access to Justice Act.

Appeal File, Exhibit 22. Agriculture wrote back:

Your Contract Release expressed one reservation. You requested that I rescind the Cure Notice dated October 30, 2006. The Cure Notice is part of the permanent Contract File, and cannot be removed from the file any more than any other documents. Your request is therefore denied.

Id. Pacific Legacy appealed this decision, and the Government has moved to dismiss the appeal for lack of jurisdiction.

Discussion

The Department of Agriculture has asked the Board to dismiss the appeal for lack of jurisdiction because Pacific Legacy does not have a valid claim under the Contract Disputes Act (CDA), 41 U.S.C. § 605(a) (2000). We agree that the appeal must be dismissed.

Pacific Legacy requested, in both its claim reservation language and in its request for relief before the Board, that the Department of Agriculture rescind the cure notice:

As restitution, the Appellant asks that the Government correct the Contract Record by rescinding its Cure Notice in writing and refuting all adverse, prejudicial, and untrue statements about Appellant's performance.

Complaint at 3.

Boards of contract appeals have held that they are authorized to grant monetary and, in some cases, declaratory relief, but not to issue a writ of mandamus, order specific performance, or grant injunctive relief. *Western Aviation Maintenance, Inc. v. General Services Administration*, GSBCA 14165, 98-2 BCA ¶ 29,816; *Rig Masters, Inc.*, ASBCA 52891, 01-2 BCA ¶ 31,468; *Maria Manges*, ASBCA 25350, 81-2 BCA ¶ 15,398. For purposes of the instant appeal, this means that the Board cannot order the Department of Agriculture to rescind a document or take a document out of a contract file.

Perhaps more importantly, we cannot hear the appeal because there is no live dispute here. A cure notice was issued as part of the routine administration of the contract, and the issues were resolved such that performance was completed on time and payment was made in full. Whatever claim Pacific Legacy may have had during performance of the contract is now moot. *See Tennant Co.*, GSBCA 8795, 91-1 BCA ¶ 23,358 (1990) (“[t]he case is moot because whatever may be the correct interpretation of the . . . clause in the contract, that interpretation can have no bearing on the actions of the parties under that contract”). Although we understand that Pacific Legacy believed then, and still believes, that the Department of Agriculture’s position was not justified, litigating the matter after the contract has been fully performed and all monetary issues resolved would have no effect on the contract or the parties’ actions thereunder.

Decision

The appeal is **DISMISSED**.

ROBERT W. PARKER
Board Judge

We concur:

JAMES L. STERN
Board Judge

ALLAN H. GOODMAN
Board Judge