



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: April 30, 2008

CBCA 1075

EAGLE ALLIANCE,

Appellant,

v.

NATIONAL SECURITY AGENCY,

Respondent.

Paul F. Khoury, Kara M. Sacilotto, Nicole J. Owren-Wiest, Jon W. Burd, and Heidi L. Bourgeois of Wiley Rein LLP, Washington, DC, counsel for Appellant.

Darrell F. Cook, Office of General Counsel, National Security Agency, Fort George G. Meade, MD, counsel for Respondent.

FENNESSY, Board Judge.

ORDER

On February 11, 2008, appellant, Eagle Alliance, commenced a “prophylactic” appeal from a decision of a contracting officer of the National Security Agency (NSA) denying appellant’s \$187.5 million claim. In its notice of appeal, appellant stated its belief that the Armed Services Board of Contract Appeals (ASBCA) was the proper forum in which to resolve the appeal because NSA “was formed pursuant to DOD Directive 5100.20 as ‘a separately organized agency within the Department of Defense under the direction, supervision, funding, maintenance and operation of the Secretary of Defense.’” However, appellant also represented that it commenced an appeal at this Board, as well as the at ASBCA, because of a lack of precedent concerning NSA appeals and uncertainty expressed

by the Chief Counsel of this Board and the Recorder and Chief Counsel of the ASBCA as to which board possesses jurisdiction to resolve this dispute.¹

Based upon the above-quoted DOD Directive and the Contract Disputes Act, 41 U.S.C.A. § 607(d) (2007), which provides that the ASBCA has jurisdiction over appeals from decisions of contracting officers of the DOD, the Board suspended proceedings in this appeal for ninety days pending resolution of the jurisdictional issue.

Appellant filed a “Motion for Confirmation of Jurisdiction” at the ASBCA with which the Government concurred. On March 18, 2008, the ASBCA issued an opinion concluding that “the ASBCA properly has subject matter jurisdiction over this appeal.” *Eagle Alliance*, ASBCA 56315 (Mar. 18, 2008).

Based upon the ASBCA’s decision, appellant has filed at this Board a “Request for Withdrawal of Appeal” with which the Government concurs. Therefore, this appeal is **DISMISSED**.

EILEEN P. FENNESSY
Board Judge

¹ We note that this Board’s counsel do not render jurisdictional decisions.