



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: July 24, 2008

CBCA 1032, 1033

GUARDIAN ENVIRONMENTAL SERVICES, INC.,

Appellant,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Robert W. Tate, Seattle, WA, counsel for Appellant.

Kenneth A. Redden and Kenneth R. Pakula, Office of General Counsel,
Environmental Protection Agency, Washington, DC, counsel for Respondent.

SHERIDAN, Board Judge.

ORDER

These appeals, along with CBCA 994, arose out of contract EP-R7-07-08, awarded to Guardian Environmental Services, Inc. (GES) on March 31, 2007, by the Environmental Protection Agency (EPA) to provide labor and materials at the Taylor Lumber and Treating (TLT) Superfund site in Sheridan, Oregon. The basis for CBCA 994 is an October 5, 2008, certified claim seeking \$1,664,490.36 in payments whereby GES asserted EPA had improperly assessed, among other things, negative incentives and liquidated damages. CBCA 1032 is an appeal from a contracting officer's final decision dated December 26, 2006, which partially terminated for default GES' contract for failure to complete certain work associated with trench drains and well vaults. CBCA 1033 is an appeal from a contracting officer's final decision dated January 10, 2007, which partially terminated for default GES' contract for failure to complete certain asphalt overlay work.

An ADR proceeding was held on February 5 and 6, 2008, at the TLT site in which various matters were resolved. On July 17, 2008, appellant's counsel moved that CBCA 1032 and 1033 be dismissed. Respondent agreed.

Regarding CBCA 994, appellant represented that this appeal should not be dismissed because, while portions of its claim had been settled at the ADR proceeding, the part of the claim relating to the retention of liquidated damages and "negative incentives" had not been resolved. Respondent argues that a claim for liquidated damages is not properly before the Board and has submitted a motion to dismiss for lack of jurisdiction.

Accordingly, CBCA 1032 and 1033 are **DISMISSED WITH PREJUDICE**. CBCA 994 remains on the Board's docket for a ruling on respondent's motion to dismiss for lack of jurisdiction.

PATRICIA J. SHERIDAN
Board Judge