



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS OR FOR SUMMARY RELIEF
DENIED: March 10, 2011

CBCA 2119

TKC AEROSPACE,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Douglas C. Proxmire of Patton Boggs LLP, Washington, DC, counsel for Appellant.

J. Stephen Brophy and Julia A. LoBosco, Office of Procurement Law, United States Coast Guard, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **McCANN**, and **DRUMMOND**.

McCANN, Board Judge.

Respondent has filed a motion seeking dismissal of this case on jurisdictional grounds or for summary relief.

Facts

On September 16, 2005, the United States Coast Guard (USCG) awarded contract no. HSCG23-05-C-DAV334 to TKC Tech for the lease of an aircraft. Appeal File, Exhibit 70. On December 12, 2005, TKC Tech executed a notice of assignment with Key Government

Finance, Inc. (Key Bank) assigning payments due to TKC Tech under the contract to Key Bank. Appeal File, Exhibit 117 at 2.

About two years later, on December 10, 2007, TKC Tech and TKC Aerospace (TKCA), its subcontractor, submitted documentation to the USCG seeking a novation of its contract to TKCA. Appeal File, Exhibit 178. On May 4, 2008, the USCG executed contract modification P00012 approving the novation from TKC Tech to TKCA. Appeal File, Exhibit 82. Previously, the contracting officer had submitted a memo to file indicating that “[l]egal counsel has reviewed and concurs that TKC complies with the requirements and has approved the Novation Agreement upon execution of this modification.” Appeal File, Exhibit 186 at 2.

From 2008 through the end of the contract performance on September 15, 2010, USCG paid for and accepted TKCA’s performance. Declaration of Sam Boyle (February 11, 2011).

Discussion

Respondent has filed a motion that it styled “Respondent’s Second Motion to Dismiss the Appeal/Summary Relief.” In this motion respondent asks that the Board dismiss the appeal on jurisdictional grounds or “find summary judgment that the contract expired prior to the events complained about in the claims.” Motion at 24.

Respondent has submitted a twenty-four page, single-spaced motion containing numerous, unrelated factual and legal allegations, few of which relate to each other or to this Board’s jurisdiction. In reviewing the motion, the Board is unable to discern what respondent’s legal positions are, or the basis of those positions. Certainly, respondent’s factual positions and legal arguments have not been stated with sufficient particularity for the Board to come to any conclusions. Accordingly, we find that respondent has not set forth any persuasive arguments supporting its position that this Board lacks jurisdiction or that respondent is entitled to summary relief.

In its response to respondent’s motion, appellant has tried to understand what respondent is claiming and respond to it appropriately. In so doing, appellant surmised that at least one of respondent’s positions is that the novation of the contract from TKC to TKCA was invalid because contract payments had previously been assigned to Key Bank. It does appear to the Board that respondent is claiming that this Board lacks jurisdiction, or that respondent is entitled to summary relief, because the novation was null and void. Respondent takes this position even though respondent approved the novation, TKCA performed for over two years after the novation, and respondent accepted and paid TKCA for that performance.

In its response, appellant correctly explains that an assignment of contract payments to a bank does not prevent a contractor from subsequently novating a contract to another contractor.

As we have indicated, respondent has set forth no arguments entitling it to prevail on its motion.

Decision

Respondent's motion to dismiss or for summary relief is **DENIED**.

R. ANTHONY McCANN
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

JEROME M. DRUMMOND
Board Judge