



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: May 8, 2014

CBCA 3630

MAGWOOD SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

Heyward Manigault, President of Magwood Services, Inc., Campbell Hall, NY,  
appearing for Appellant.

Gregory C. Carter, Office of the Chief Counsel, Department of Transportation,  
Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **STERN**, and **SHERIDAN**.

**SHERIDAN**, Board Judge.

This matter is before the Civilian Board of Contract Appeals (CBCA) on a notice of appeal submitted by appellant, Magwood Services, Inc. (Magwood). This Board lacks jurisdiction to resolve the dispute because Magwood is not a contractor in privity with the Federal Government as required by the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012).

### Background

A review of the documents submitted in this appeal indicates that Magwood was a contractor who provided services at Sky Acres Airport (Sky Acres) located in Millbrook, New York. Sky Acres is a privately-owned reliever airport that appears to have received a grant, FAA AIP 3-36-0223-24-12, from the Federal Aviation Administration (FAA) under the Airport Improvement Program authorized by chapter 471 of title 49 of the United States Code. 49 U.S.C. § 47101-47142 (2012). The grant was for replacement of storm water drainage and the airfield lighting electrical vault for runway 17/35 at Sky Acres. Sky Acres contracted with Magwood to provide those services.

Disputes arose between Magwood and Sky Acres. According to Magwood, its attempts to have those disputes addressed by Sky Acres went unanswered so it filed an appeal with this Board.

### Discussion

Clearly, our Board has no authority to resolve this appeal. Magwood is not a contractor in privity with the Federal Government as required by the CDA. “The term ‘contractor’ means a party to a Federal Government contract other than the Federal Government.” 41 U.S.C. § 7101(7). As we recently explained in *Eagle Peak Rock & Paving, Inc. v. Department of the Interior*, CBCA 2770, 12-2 BCA ¶ 35,146, at 172,521:

The requisite privity of contract needed to permit an appeal under the CDA has generally been limited to prime contractors who have actually contracted with the Government. Attempts by other parties, such as subcontractors and sureties, to extend the concept of privity beyond the prime contractor have typically been rejected.

Magwood’s contract appears to have been with Sky Acres, a privately-owned airport in New York. As such, we have no jurisdiction under the CDA to consider this dispute.<sup>1</sup>

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<sup>1</sup> We also note that even if Magwood had a contract with the FAA, the Board does not have jurisdiction to decide protests and contract disputes arising out of procurements and contracts entered into under the FAA’s Acquisition Management System (AMS). To the extent Magwood’s contract might have been entered into under the FAA’s AMS, the dispute would be handled by the FAA’s Office of Dispute Resolution for Acquisition (ODRA). 49 U.S.C. § 40110(d)(4) (2012). ODRA’s procedural rules can be found at 14 CFR Part 17. Whether Magwood’s contract was a contract entered into under the FAA’s AMS will be a question for the ODRA if Magwood files a case in that forum.

Decision

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

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PATRICIA J. SHERIDAN  
Board Judge

We concur:

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JERI K. SOMERS  
Board Judge

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JAMES L. STERN  
Board Judge