



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: June 12, 2015

CBCA 4422

ENVIRONMENTAL SAFETY CONSULTANTS, INC.,

Appellant,

v.

SMALL BUSINESS ADMINISTRATION,

Respondent.

Peter C. Nwogu, President of Environmental Safety Consultants, Inc., Stone Mountain, GA, appearing for Appellant.

Christopher J. McClintock, Office of Litigation, Small Business Administration, Washington, DC, counsel for Respondent.

Before Board Judges **POLLACK**, **GOODMAN**, and **SULLIVAN**.

GOODMAN, Board Judge.

Appellant, Environmental Safety Consultants, Inc. (ESCI), has filed this appeal pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012). It alleges that the appeal arises from a government claim against it. Respondent, the Small Business Administration (SBA), has filed a motion to dismiss for lack of jurisdiction. In response, ESCI filed a motion for summary relief, and respondent has filed a response thereto. We grant respondent's motion to dismiss the appeal for lack of jurisdiction.

Background

On June 20, 2012, the United States District Court for the District of Maryland entered an order in the matter of *United States ex rel. Graybar Electric Co. v. Environmental Safety Consultants, Inc.* No. AW-97-321. In that order, the court renewed a judgment against appellant in favor of Gulf Insurance Company, Inc. (Gulf) in the amount of \$709,727.79. Appeal File, Exhibit 1.

SBA was not a party to that case, nor did ESCI have a contract with the SBA. However, pursuant to a guarantee under SBA's surety bond guarantee program, SBA had previously reimbursed Gulf 90% of the losses, costs, and expenses relating to bonds issued by Gulf to ESCI.

On May 16, 2013, The Travelers Indemnity Company, as successor in interest to Gulf, assigned to SBA "all rights against debtors, [including ESCI,] to execute on, and recover pursuant to, the Judgment obtained by [Gulf] in the amount of \$709,727.79, including the right to recover all interest due on the [Renewed] Judgment." Appeal File, Exhibit 2 at 3.

Pursuant to the assignment, SBA proceeded to collect the debt owed by ESCI under the renewed judgment. On October 24, 2014, SBA provided notice to ESCI of its intent to refer the debt to the Department of the Treasury for collection. Appeal File, Exhibit 3. The notice provided ESCI sixty days to submit a written response that the debt was not delinquent or cannot be legally enforced. *Id.* at 2. ESCI provided a response by letter dated November 3, 2014. *Id.*, Exhibit 4. On January 7, 2015, the director of the SBA's surety bond guaranty program sent ESCI a decision letter, analyzing ESCI's arguments and determining that "the Renewed Judgment will be immediately referred to Treasury to execute on and recover the full amount of the Renewed Judgment." *Id.*, Exhibit 5.

On December 24, 2014, ESCI filed a notice of appeal at this Board, challenging SBA's October 24, 2014, notice, characterizing the matter as "SBA's contract actions." ESCI filed additional information on January 8, 2015, challenging SBA's decision, citing the CDA, and referencing contracts relating to Gulf.

SBA has filed a motion to dismiss for lack of jurisdiction. In response, ESCI filed a motion for summary relief, and respondent has filed a response thereto.

Discussion

Respondent has moved to dismiss this appeal for lack of jurisdiction. The CDA, at 41 U.S.C. § 7105(e)(1)(B), states the jurisdiction of the Civilian Board of Contract Appeals as follows:

The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

In addition, under 41 U.S.C. § 7104(a), “[a] contractor, within 90 days from the date of receipt of a contracting officer’s decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.” The term “contractor” is defined at 41 U.S.C. § 7101 as “a party to a Federal Government contract other than the Federal Government.”

ESCI challenges SBA’s enforcement of a debt arising out of a renewed judgement from a United States District Court received by ESCI’s surety. SBA’s enforcement of the debt does not arise from a contract between ESCI and the SBA, but from an assignment of the debt that SBA received from ESCI’s surety. The renewed judgment of the United States District Court and SBA’s enforcement of that judgment are not appealable to this Board. An SBA contracting officer has not issued a decision appealable to this Board pursuant to the CDA. We lack jurisdiction to consider this appeal.

Decision

Respondent’s motion to dismiss this appeal for lack of jurisdiction is granted. This appeal is **DISMISSED FOR LACK OF JURISDICTION**. We do not address appellant’s motion for summary relief, since we have no authority to consider the appeal’s merits.

ALLAN H. GOODMAN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

MARIAN E. SULLIVAN
Board Judge