



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: September 2, 2015

CBCA 4771

D & D HOME INDUSTRIAL SERVICES,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Lewis J. Paras of Petrarca and McGair, Inc., Warwick, RI, counsel for Appellant.

Jeanne S. Morris and Barbara J. Steutzer, Office of General Counsel, Department of Veterans Affairs, Leeds, MA, counsel for Respondent.

HYATT, Board Judge.

ORDER

D & D Home Industrial Services appealed a contracting officer's deemed denial of a claim for costs incurred pursuant to its contract with Normandie Flooring, Inc. to install flooring at the Department of Veterans Affairs (VA) Medical Center in Providence, Rhode Island. Upon review of the appeal, the Board, noting that an entity not in direct privity of contract with the Government may not sustain an action before the Board except under specific circumstances where the Government, either by contract language or its actions, consents to such access, *United States v. Johnson Controls, Inc.*, 713 F.2d 1541 (Fed. Cir. 1983), issued an order to show cause why the appeal should not be dismissed for lack of jurisdiction on the ground that the appellant was not a party to a contract with the VA.

In response to the show cause order, appellant stated that it was not privy to the contract between Normandie Flooring and the VA and had not had an opportunity to review it to determine if one of the exceptions to the requirement for direct privity with the Government might exist.

The Board issued an order on proceedings directing the VA to file with the Board an appeal file containing the contract and any other documents or materials relevant to this dispute as required by Board Rule 4(a), 48 CFR 6101.4(a) (2014). The VA submitted its appeal file on July 31, 2015, and simultaneously filed a motion to dismiss the appeal for lack of jurisdiction on the ground that D & D was not a contractor with the Government. In its motion, the VA pointed out that its prime contractor for the project, which was for renovations to the first floor elevator lobby of the VA Medical Center in Providence, was Jackson Ryan Construction Services, Inc. (JRC). JRC subcontracted with Normandie Flooring, Inc. to perform flooring installation. The VA further stated that neither Normandie Flooring nor D & D is mentioned in the prime contract, and the contract specialist had no communications with either Normandie Flooring or D & D. Additionally the VA noted that there is no indication that JRC agreed to sponsor any claims nor did it act as a purchasing agent for the VA.

On August 31, 2015, counsel for D & D requested a voluntary dismissal of the appeal. Appellant states that upon review of the appeal file it learned for the first time that the prime contractor was JRC and not Normandie Flooring. Appellant now agrees that it has no privity with the prime contractor or the Government with respect to this project and that under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012), the Board has no jurisdiction to hear this appeal. Accordingly, appellant seeks to voluntarily dismiss its appeal for lack of jurisdiction.

Appellant's request is granted. This appeal is hereby **DISMISSED**. The VA's motion to dismiss is moot.

CATHERINE B. HYATT
Board Judge