



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED AS MOOT: November 13, 2015

CBCA 3170

CARE ONE EMS, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Wesley C. McCabe, Chief Executive Officer of Care One EMS, LLC, Van Buren, AR, appearing for Appellant.

Tracy Downing, Office of the Regional Counsel, Department of Veterans Affairs, Nashville, TN, counsel for Respondent.

Before Board Judges **POLLACK**, **KULLBERG**, and **LESTER**.

POLLACK, Board Judge.

On August 8, 2013, the Board denied respondent's motion for summary relief. *Care One EMS, LLC v. Department of Veterans Affairs*, CBCA 3170, 13 BCA ¶ 35,382. In that ruling, which arose out of the Department of Veterans Affairs' (VA) termination for default of two ambulance contracts, we reviewed the basic facts and contentions of the parties. For purposes of this decision, we refer back to those findings and need not repeat them here. At the time of that August 2013 ruling, appellant was represented by counsel. Counsel thereafter withdrew and appellant has since handled matters through its chief executive officer. After an extended period, a trial was tentatively scheduled for May 2015. That was canceled and the parties agreed to proceed on the record. Briefs then followed.

In the Government brief, counsel for the VA made the statement that the VA was intending to or had converted the defaults to no-cost terminations for convenience. Because no modifications had ever been provided to the Board and because the representation was not clear, we sought clarification. On October 29, 2015, the VA responded by providing the Board with copies of two modifications. One, P0006, modifies contract no. VA256-P-0859 and converts the prior default termination to one for convenience. The second, P0008, modifies contract no. VA256-P-0627 and converts that termination to one for convenience.

By now issuing the terminations for convenience, the VA has rendered moot our role in rendering a decision. The VA has withdrawn the defaults, thereby making them a nullity.

We have stated numerous times during these proceedings that the only matter that was before the Board was the propriety of the default terminations. That was because appellant never filed a dollar claim with the contracting officer. Having said that, appellant did include a general request for monetary damages in its complaint. While we had advised VA counsel during the proceedings that no dollar claim was properly before us, the VA nevertheless filed a motion asking that we dismiss that request for lack of jurisdiction. To fully settle this record, we address the motion at this time.

As noted above, the request for monetary damages appears in appellant's complaint, but appellant did not submit any type of convenience termination settlement proposal or contract claim to the contracting officer seeking such monies. The termination provision for the contract here is contained within the "Contract Terms and Conditions – Commercial Items" clause from the Federal Acquisition Regulation (FAR), 48 CFR 52.212-4 (2009), which governs the types of costs that a contractor terminated for the Government's convenience can recover. We make no judgments as to any further actions dealing with dollars because, "[b]efore we could consider any request for termination settlement costs, the contractor would still have to submit a termination settlement proposal to the agency, after which time the proposal would have to ripen into a claim." *I-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,566 n.12 (citing *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1543-44 (Fed. Cir. 1996)). To the extent that appellant views its requested costs as a claim for damages arising outside the context of the convenience terminations, it must present the contracting officer with a claim compliant with the requirements of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), seeking those costs. *Vet Tech, LLC v. Department of Veterans Affairs*, CBCA 3835, et al., 15-1 BCA ¶ 35,977, at 175,795.

Accordingly, we grant the VA's motion to dismiss appellant's monetary requests for lack of jurisdiction. Whether appellant proceeds with further action as to dollars (through

submission of some type of claim or settlement proposal to the contracting officer) is appellant's decision.

Decision

The VA action in issuing terminations for convenience removes the default terminations. Since the propriety of the defaults was the matter before the Board, appellant (by VA issuance of the termination for convenience modifications) has already secured the remedy that the Board could have rendered had it ruled in appellant's favor. Accordingly, we **DISMISS** the action **AS MOOT**.¹

HOWARD A. POLLACK
Board Judge

We concur:

H. CHUCK KULLBERG
Board Judge

HAROLD D. LESTER, JR.
Board Judge

¹ Because the VA's conversion of the default terminations to ones for convenience moots this appeal, we need not address the VA's pending motion to dismiss for failure to prosecute. We deny that motion as moot, as well.