



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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APPELLANT'S MOTION TO EXTEND DISCOVERY GRANTED IN PART:  
February 20, 2025

CBCA 7999

NOMUDA, INC.,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Dilyn Loveless and Timothy J. Turner of Whitcomb Selinsky, P.C., Denver, CO; and Chase Tanner Tavernier of Whitcomb Selinsky, P.C., Lakewood, CO, counsel for Appellant.

Matthew Lane and Katlyn Har, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

**CHADWICK**, Board Judge.

ORDER<sup>1</sup>

Appellant, NoMuda, Inc. (NoMuda), moves for a forty-five-day extension of discovery, which ended on February 7, 2025. Respondent, Department of Homeland Security (DHS), opposes. We grant NoMuda's motion in part.

Background

NoMuda alleges in its amended complaint that, while performing as a third-tier subcontractor on a Federal Emergency Management Agency (FEMA) training project, it became a direct contractor to FEMA as a result of promises made by a FEMA management employee (Ms. Bonilla). *See NoMuda, Inc. v. Department of Homeland Security*, CBCA 7999, 24-1 BCA ¶ 38,662, at 187,943–44; *NoMuda, Inc. v. Department of Homeland Security*, CBCA 7999, 24-1 BCA ¶ 38,656, at 187,919.

After ruling on motions, the Board ordered in November 2024, in part, as follows:

An initial period of limited discovery may begin now and will end **Friday, February 7, 2025**. Each party may serve up to **ten** interrogatories and take up to **three** depositions absent leave of the Board. Document requests and requests for admission, if any, are not expressly limited but should be reasonable in number and focused on the issues. Discovery disputes may be raised by **joint** letter or by motion under Rule 13(e).

The primary relevant issue at this time is Ms. Bonilla's contracting authority. In the interest of using time efficiently, respondent may conduct similarly focused discovery into appellant's corporate history, identity, and personnel, including contracting authority.

NoMuda propounded discovery on January 7, 2025, thirty-one days before the scheduled end of the initial period of limited discovery.<sup>2</sup> NoMuda served ten interrogatories,

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<sup>1</sup> This order is being published to assist in providing greater transparency to the public about how the Board addresses issues. Although single-judge orders like this one are binding in the appeals in which they are issued, they are, consistent with Board Rule 1(d) (48 CFR 6101.1(d) (2024)), not precedential in other appeals before the Board.

<sup>2</sup> NoMuda says it waited until almost the last day for written discovery requests, *see* Rule 14(b), (c), (d)(2) (allowing thirty days to respond), because it needed time to analyze information obtained by a NoMuda officer, who has the same counsel, in private litigation in the United States District Court for the District of Columbia. In that case, the

twenty-nine requests for production of documents, and twenty-four requests for admission, and sought three depositions, including one of a party representative and two of non-party witnesses.<sup>3</sup> Significantly, we do not have before us a motion to resolve any DHS objections to this discovery or to compel responses.

NoMuda focuses in its motion on what happened (or failed to happen) regarding the depositions. By email on January 7, followed up on January 16 and 19 (the latter a Sunday), DHS counsel asked for clarification as to whether it was NoMuda's "position" that the discovery it sought was "in compliance with the Board's direction of 'limited discovery' regarding the issue of 'Ms. Bonilla's contracting authority.'" NoMuda finally responded on January 22, confirming that it "intend[ed] to take advantage of the three depositions" allowed. DHS counsel promptly responded that he would discuss "scheduling any appropriate depositions with appropriate limitations as to their scope. Alternatively, if there are any stipulations or signed declarations that we can negotiate and preserve everyone's resources, I'd be happy to discuss that option." DHS does not contend that witnesses or counsel were unavailable for depositions.

Counsel conferred on January 30 but could not resolve the impasse about the depositions before NoMuda filed its February 6 motion to extend discovery, which it renewed on February 13.<sup>4</sup> NoMuda stresses in its motion that, whatever the Board may think of the respective merits of the parties' other positions, "the fact remains that Respondent failed to provide deposition dates" after NoMuda requested them on January 6.

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NoMuda officer alleges that he also ran Cyberricade, Inc., a second-tier subcontractor on the same FEMA project on which NoMuda became a lower-tier subcontractor. *See* Second Amended Civil Complaint for Equitable and Monetary Relief and Demand for Jury ¶¶ 11-12, *Angeline v. Novaces, L.L.C.*, No. 1-22-cv-01668-RDM (D.D.C. July 24, 2023); *NoMuda, LLC*, 24-1 BCA at 187,943. We resolve NoMuda's instant motion without needing to decide the materiality of anything obtained through the district court litigation.

<sup>3</sup> NoMuda served formal deposition "notices," which are neither required nor encouraged under Rule 15(a).

<sup>4</sup> Because both parties asserted facts without providing evidence, the presiding judge denied NoMuda's February 6 motion without prejudice. NoMuda filed a renewed motion with exhibits on February 13. DHS filed its opposition on February 18.

### Discussion

Although DHS's concerns about the scope of the discovery sought by NoMuda loom in the background, neither party moves to compel discovery or for relief from discovery. *See* Rule 13(e). We have before us NoMuda's motion for more time to take depositions.

Our rules do not anticipate threshold objections to deposition topics. *See* Rule 15(a) ("Unless otherwise ordered, parties may take depositions after service of the answer."). In federal civil litigation, even when testimonial privileges are at issue, the proper practice is for counsel to object "in the context of a propounded question," not to a deposition as such. *National Life Insurance Co. v. Hartford Accident & Indemnity Co.*, 615 F.2d 595, 598 (3d Cir. 1980) (citing *Hoffman v. United States*, 341 U.S. 479, 487 (1951)); *accord Alpha I, L.P. ex rel. Sands v. United States*, 83 Fed. Cl. 279, 290 (2008) ("[D]efendant's blanket assertion of the deliberative process privilege [to a deposition] is premature." (citing cases)).

Consequently, we see no sound basis for DHS not to have promptly cooperated to schedule the depositions that NoMuda proposed, albeit inconveniently late in discovery, and to have objected to questions, as necessary, instead. On that narrow basis, we extend the period *to take depositions* on the limited subject matter to March 24, 2025, which is the same number of days from today as were left in discovery when NoMuda served its notices.

All other discovery deadlines remain as set and have passed. NoMuda will need to live with the answers and objections to the written discovery it served in January or else obtain other responses via motion to compel. Nor are we ruling on whether any information NoMuda seeks is within the scope set in the November 2024 order.

### Decision

NoMuda's motion is **GRANTED IN PART**. NoMuda may take up to the three allowed depositions by **Monday, March 24, 2025**. The presiding judge will address post-discovery deadlines by separate order.

Kyle Chadwick  
KYLE CHADWICK  
Board Judge