

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
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Inchcape Shipping Services) ASBCA Nos. 57152-57160
)
Under Contract No. N00244-01-D-0032 *et al.*)

APPEARANCE FOR THE APPELLANT: Donald C. Holmes, Esq.
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APPEARANCES FOR THE GOVERNMENT: Thomas N. Ledvina, Esq.
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OPINION BY ADMINISTRATIVE JUDGE SCOTT
ON GOVERNMENT MOTION TO REVOKE RULE 12.3 STATUS

Motion and Background

The nine referenced appeals, filed under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, involve appellant’s various contracts and alleged contracts with the United States Navy for ship husbandry services. On 19 March 2010 appellant filed nine notices of appeal from four final decisions of the contracting officer (CO) that denied its nine separate claims. Each claim was well under \$100,000, but was certified nonetheless. The total amount of the claims was \$140,121.57. With each appeal notice appellant filed a complaint and its election that the appeal be decided under the Board’s accelerated Rule 12.3 procedures. On 22 March 2010 the Board docketed each appeal under those accelerated procedures and established a schedule.

On 30 March 2010 the Board received several motions from the Navy, including its “MOTION TO DENY APPELLANT’S REQUEST TO PROCEED UNDER RULE 12,” in which it states that it “vehemently objects” to proceeding under Rule 12.3 (mot. at 1). The Navy contends, among other things, that: (1) the appeals do not qualify under Rule 12.3 because the combined amount of the claims exceeds \$100,000; (2) appellant did not define its claims clearly enough to allow the CO to process them; (3) there are alleged “questions of jurisdiction with regard to authority, direction, scope, compliance

with contractual invoice procedures, and acceptance of goods allegedly delivered” (mot. at 3); (4) appellant has misled the Board “by failing to acknowledge documents critical to jurisdiction” (mot. at 3-4); (5) the claims do not qualify for “simplified” procedures because the issues are complex and involve jurisdictional matters and numerous Navy defenses (mot. at 4); (6) witnesses and relevant evidence are no longer available, and appellant allegedly improperly sought sequential hearings and declined consolidation, all prejudicing the Navy; and (7) the Navy wants a “full decision with precedential value” because if appellant did not comply with proper invoice procedures before submitting its invoices, then the Board allegedly “has no jurisdiction” (mot. at 5).

By order dated 2 April 2010 the Board noted that, contrary to the Navy’s contention, appellant had requested that the nine claims be scheduled for processing and hearing together. The Board consolidated the appeals for disposition and suspended Rule 12.3 procedures, Rule 4 file requirements, and the Navy’s obligation to respond to appellant’s complaints, pending the Board’s resolution of the Navy’s motions. On 30 April 2010 the Board received appellant’s response to the motions, including its opposition to removal of the appeals from the Rule 12.3 docket.

DISCUSSION

With regard to accelerated appeal disposition, the CDA requires:

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a [CO] where the amount in dispute is \$100,000 or less. The accelerated procedure *shall be applicable at the sole election of only the contractor*. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure. [Emphasis added]

41 U.S.C. § 607(f). The Board’s Rules 12.1(b) and 12.3 implement the CDA’s requirements concerning accelerated appeals, including that the procedures are available solely at appellant’s election and that a decision is to issue whenever possible within 180 days after the Board receives appellant’s election. Decisions under the accelerated procedures are rendered by two-judge panels, or three judges in the case of dissent, and are precedential.

Upon consideration of each of the Navy’s arguments and of appellant’s responses, there is no justification for removing these appeals from the Board’s accelerated Rule 12.3 docket. Each certified claim in question is a separate claim under \$100,000. Each appeal therefore qualifies for disposition under the Board’s accelerated procedures. *Jay*

Dee Militarywear, Inc., ASBCA No. 46539 *et al.*, 94-2 BCA ¶ 26,720. The accelerated process is procedural, not jurisdictional. Many of the Navy's contentions above are patently meritless. The Navy can raise any alleged jurisdictional impediments to the Board's resolution of appellant's claims during the course of the proceedings.

DECISION

We deny the Navy's motion to remove the appeals from the Rule 12.3 docket. The Board's 2 April 2010 suspension of Rule 12.3 procedures, Rule 4 file requirements, and the Navy's obligation to respond to the complaints, is hereby lifted. Due dates under Rule 12.3 and the Board's 22 March 2010 notices of docketing are hereby extended by 34 days, the period of time between the Board's suspension order and this decision, such that the Board's decision on the merits will now issue by 19 October 2010.

Dated: 6 May 2010

CHERYL L. SCOTT
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 57152-57160, Appeals of Inchcape Shipping Services, rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals