



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: August 4, 2022

CBCA 7376

U.S. ARMY TACTICAL SUPPLY,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Khalid Safi, Chief Executive Officer of U.S. Army Tactical Supply, Ashburn, VA, appearing for Appellant.

Randal W. Wax, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **DRUMMOND**, **KULLBERG**, and **O'ROURKE**.

KULLBERG, Board Judge.

Respondent, the Department of State (DOS), requests that the Board dismiss this appeal, which is a claim for the cost of materials delivered to the United States Embassy, Bangui, Central African Republic (embassy). DOS contends that the appellant, U.S. Army Tactical Supply (USATS), is not the contractor who delivered the materials to the embassy and the Board's dismissal of USATS' previous appeal precludes another appeal of the denial of the same claim. The appellant contends that it has established an address and bank account in the United States for the purpose of receiving payment. For the reasons stated below, the Board dismisses the appeal.

Background

On August 28, 2017, the embassy issued order number SCT20017M0370 (M0370) to USATS, which was located in Kuwait City, Kuwait, in the amount of \$4421.16, and on September 18, 2017, the embassy issued order SCT20017M0414 (M0414) to USATS in the amount of \$3603.50. USATS submitted a claim for payment of orders M0370 and M0414, but DOS denied payment. On March 14, 2019, USATS appealed the denial of payment, and DOS moved to dismiss the appeal because USATS' representative sought payment to a personal bank account and, therefore, lacked standing to bring the appeal. The Board denied the motion to dismiss, citing the lack of a developed record. *U.S. Army Tactical Supply v. Department of State*, CBCA 6417, 22-1 BCA ¶ 37,996, at 184,517 (2020). Subsequently, USATS requested, without opposition, that the appeal be dismissed, and the Board dismissed the appeal with prejudice. *U.S. Army Tactical Supply v. Department of State*, CBCA 6417 (Jan. 11, 2021).

On April 20, 2022, USATS filed the instant appeal, which again sought payment of orders M0370 and M0414. USATS represented in its notice of appeal that it had "opened a new company and made a new bank account . . . in the USA." The Board directed the contracting officer (CO) to issue a final decision with regard to USATS' claim, and the CO issued his final decision (COFD) on June 15, 2022. The COFD denied USATS' claim and noted that USATS was a newly established business and not the contractor. Additionally, the COFD noted that USATS had previously appealed the same claim, CBCA 6417, which the Board had dismissed with prejudice.

On June 29, 2022, DOS filed a request for the dismissal of this appeal for reasons similar to those in the COFD. DOS argued that USATS was not the contractor for the embassy orders, and the Board's dismissal of CBCA 6417 precluded USATS from bringing the present appeal. In response to DOS' motion, USATS stated that "[w]e successfully registered our U.S. based company with [the system for award management (SAM),] providing our new U.S. company bank information."

Discussion

The issue in this matter is whether DOS has presented sufficient grounds for the dismissal of USATS' appeal. DOS argues that the Board lacks jurisdiction because USATS was not the contractor for the embassy orders or, in the alternative, that the Board's dismissal of USATS' previous appeal precludes USATS from bringing the present appeal. The Board addresses DOS' arguments in turn.

The Board's jurisdiction is based upon the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). Under the CDA, only a contractor can submit a claim to a contracting

officer. *Id.* § 7103(a)(1). A contractor “means a party to a Federal Government contract other than the Federal Government.” *Id.* § 7101(7). The Board lacks jurisdiction to hear an appeal brought by a party that was not the contractor. *Wackenhut International, Inc. v. Department of State*, CBCA 1235, 09-2 BCA ¶ 34,255, at 196,260. The Board finds that the record does not support DOS’ contention that USATS is not the contractor for the embassy’s orders M0370 and M0414 but rather is a newly established business entity with no right to bring this appeal. While DOS has shown that USATS made two different SAM registrations, those registrations only show USATS’ repeated attempts to obtain payment.

In the alternative, DOS contends that the Board’s dismissal with prejudice of USATS’ previous appeal, CBCA 6417, precludes USATS’ present appeal. In general, “[a] dismissal with prejudice is a judgment on the merits for purposes of claim preclusion.” *SBBI, Inc. v. International Boundary & Water Commission*, CBCA 4994, 17-1 BCA ¶ 36,722, at 178,816 (quoting *Pactiv Corp. v. Dow Chemical Co.*, 449 F.3d 1227, 1230 (Fed. Cir. 2006)). “The doctrine of claim preclusion operates by virtue of a final judgment, whether the judgment results by default, consent, dismissal with prejudice, or otherwise.” *Id.* (quoting *Telcom Systems Services, Inc. v. Department of Health & Human Services*, GSBCA 12488-P, 94-1 BCA ¶ 26,272, at 130,703 (1993)).

Dismissal of this appeal is proper because USATS voluntarily requested dismissal of its previous appeal, CBCA 6417, and USATS’ present appeal involves the same claim for payment of the embassy orders that it asserted in CBCA 6417. USATS is therefore precluded from bringing the present appeal. Nothing in the record suggests that USATS’ request for dismissal of CBCA 6417 was anything other than a conscious decision to forego any further litigation of its claim, and USATS has no right to revive that claim.

Decision

The appeal is **DISMISSED**.

H. Chuck Kullberg

H. CHUCK KULLBERG

Board Judge

We concur:

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE

Board Judge