



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: November 8, 2007

CBCA 865

UTICA MUTUAL INSURANCE COMPANY,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Bruce W. Hoover of Goldberg Segalla LLP, Buffalo, NY, counsel for Appellant.

Ronald Mulach, Office of the General Counsel, Department of Agriculture, Milwaukee, WI, counsel for Respondent.

GILMORE, Board Judge.

ORDER

In this matter, appellant, Utica Mutual Insurance Company (Utica) seeks to clarify its rights and obligations under the payment bond it furnished in connection with a timber sale contract between the Department of Agriculture, Forest Service (DAFS) and Payne Enterprises (Payne). After Payne defaulted under the contract, Utica paid \$757,334.64 to DAFS under the payment bond. The parties are in dispute as to what other financial obligations appellant has to DAFS under the payment bond, and whether appellant is entitled to an assignment of DAFS's rights against Payne.

On October 12, 2007, respondent filed a motion to dismiss the appeal under the Contract Disputes Act of 1978, 41 U.S.C.A. §§ 601-613 (2006) (CDA), on the grounds that: (1) there is no contract between appellant and respondent; (2) there is no claim by a contractor against the Government relating to a contract; and (3) there is no final decision by the contracting officer. Appellant did not file a response to the motion. Instead, appellant and respondent filed a joint stipulation, agreeing and stipulating that the Board does not have subject matter jurisdiction under the CDA and that the appeal should be dismissed with prejudice. While the parties have no authority to independently determine whether the Board has jurisdiction, it is clear that the parties believe that this matter is not properly before the Board, and that they do not want the Board to proceed with the appeal.

Accordingly, this appeal is **DISMISSED**.

BERYL S. GILMORE
Board Judge