



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: October 22, 2014

CBCA 2943

ENVIRONMENTAL SAFETY CONSULTANTS, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Peter C. Nwogu, President of Environmental Safety Consultants, Inc., Stone Mountain, GA, appearing for Appellant.

Charles B. Wallace and Sara T. Zaffina, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

Before Board Judges **STERN**, **McCANN**, and **KULLBERG**.

STERN, Board Judge.

ORDER

This appeal arises from a contract between the Department of the Interior, National Park Service (Interior) and appellant, Environmental Safety Consultants, Inc. (ESCI), entered into on September 25, 1995. The complicated history of this matter need not be discussed since appellant has moved to dismiss the appeal. Appellant bases its request for dismissal on a decision by the United States Court of Appeals for the Federal Circuit (Court of Appeals). Appellant states that the basis for its action before the Board, a challenge to an

alleged Government setoff claim against amounts the Government owes appellant, no longer exists, since the Court of Appeals has dismissed the Government's claim. Appellant states that, based on this decision, it has no evidence to support the gravamen of its appeal. Appellant requests that the dismissal be without prejudice, "in the event the Government will attempt to cook up another bogus setoff claims [sic] in the near future"

Interior opposes ESCI's motion to dismiss the appeal without prejudice and argues that the dismissal be with prejudice, given the history of the appeal and the resources expended by respondent in defending the claim. Respondent urges the Board, in the alternative, to grant respondent's motion to dismiss for lack of subject matter jurisdiction previously filed by Interior. The Board finds that, given appellant's motion and the Board disposition, as stated herein, addressing Interior's motion is unnecessary at this juncture.

Since the appellant concedes that there is no longer a basis for its claim presently before the Board, it is appropriate to dismiss the claim with prejudice. The Board will address the merits of any future appeal if such an appeal is filed.

Accordingly, the appeal is **DISMISSED WITH PREJUDICE**.

JAMES L. STERN
Board Judge

We concur:

R. ANTHONY McCANN
Board Judge

H. CHUCK KULLBERG
Board Judge