



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR SUBSTITUTION OF PARTIES GRANTED;
APPEAL DISMISSED WITH PREJUDICE: June 20, 2017

CBCA 5444

ENGILITY CORPORATION,

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

Mark J. Stechschulte, Vice President, Assistant General Counsel and Assistant Secretary of Engility Corporation, Chantilly, VA, counsel for Appellant.

R. René Dupuy, Office of General Counsel, Agency for International Development, Washington, DC, counsel for Respondent.

RUSSELL, Board Judge.

ORDER

The Board is in receipt of the parties' motions for substitution of parties and to dismiss with prejudice. This appeal was originally filed by International Resources Group, Ltd. (IRG), against the United States Agency for International Development following the agency's denial of IRG's claim under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012). The parties state the following in support of their motion for substitution:

[T]he contract under which this Appeal arises . . . was novated to Engility Corporation ("Engility"). The United States Agency for International Development ("USAID"), Engility, and International Resources Group, Ltd.

(“IRG”) were all parties to the novation. The novation was prior to but pursuant to a sale of all of the shares of IRG by Engility. Based on this novation, Engility moves this Board to substitute Engility for IRG in this appeal.

The Board’s Rules do not directly address the parties’ requested relief of substitution of parties. However, these rules allow us to “take[] into consideration” provisions under the Federal Rules of Civil Procedure “which address matters not specifically covered [by the Board’s Rules].” 48 CFR 6101.1(c), (d) (2016). Rule 25(c) of the Federal Rules of Civil Procedure provides that, “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Fed. R. Civ. P. 25(c). The Rule does not require a tribunal or party to take any action after an interest has been transferred. *Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 71-72 (3d Cir. 1993). However, if a party wishes to do so, it may move for substitution of the transferee in interest. Fed. R. Civ. P. 25(c). “Because . . . substitution under Rule 25(c) does not ordinarily alter the substantive rights of parties but is merely a procedural device designed to facilitate the conduct of a case, a Rule 25(c) decision is generally within the [tribunal’s] discretion.” *Luxliner*, 13 F.3d at 71-72. “To determine whether an entity is a transferee of interest so as to trigger this discretion, however, a [tribunal’s] mission is one of applying law to facts.” *Id.* at 72. In considering a motion for substitution, the tribunal focuses on whether the motion would “facilitate the conduct of the litigation.” *Id.*

Here, Engility, due to its actions as relates to IRG, is clearly a “transferee of interest.” Thus, allowing Engility to be substituted for IRG in this appeal is appropriate under Fed. R. Civ. P. 25(c). Further, both parties agree that Engility is now the real party in interest, and as the parties have resolved the claim serving as the basis of this appeal, the substitution would certainly facilitate bringing this appeal to a close. Accordingly, for the forgoing reasons, the motion to substitute Engility for IRG is **GRANTED**.

As for the parties’ motion to dismiss, the Board commends the parties on reaching a settlement and, consistent with the parties’ motion, we **DISMISS** this appeal **WITH PREJUDICE**.

BEVERLY M. RUSSELL
Board Judge