



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: August 17, 2020

CBCA 6417

U.S. ARMY TACTICAL SUPPLY,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Mohammad Wali Mohammad, Chief Executive Officer of U.S. Army Tactical Supply, Abu Dhabi, UAE, appearing for Appellant.

Dennis J. Gallagher, 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), has moved to dismiss the appeal of U.S. Army Tactical Supply (USATS). DOS contends that USATS' representative, Mohammad Wali Mohammad, is not the real party in interest. For the reasons stated below, the Board denies the motion.

Background

On August 28, 2017, the United States Embassy Bangui, Central African Republic (embassy), issued to USATS order SCT20017M0370 (0370) for security-related supplies in the amount of \$4421.16, and on September 18, 2017, the embassy issued order SCT20017M0414 (0414) for plastic pallets in the amount of \$3603.50. The ordering documents show that USATS' was located in Kuwait City, Kuwait. DOS did not pay USATS' invoices for orders 0370 and 0414 due to concerns that the invoices requested payment to a party other than USATS.

On March 14, 2019, USATS' representative filed this appeal alleging the embassy's failure to pay amounts due for orders 0370 and 0414. Although DOS has represented that it would pay for the materials delivered under those orders, it will only do so if USATS' representative can show that he has a legal right to receive payment. On January 10, 2020, DOS moved to dismiss this appeal, alleging that USATS' representative is not the real party in interest "for purposes of claiming payment under orders issued to [USATS] and that in the absence of proof of his ownership or control the Board has no jurisdiction over his claims."

Discussion

DOS contends that USATS' representative is not the real party in interest, and the Board should, accordingly, dismiss this appeal. The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2018), defines a contractor as "a party to a Federal Government contract other than the Federal Government." *Id.* § 7101(7). "An entity that does not meet that definition of a 'contractor' is 'not in privity of contract with the government' and 'cannot avail [itself] of the CDA's appeal provisions.'" *Eastco Building Services v. General Services Administration*, CBCA 5272, 17-1 BCA ¶ 36,670 (quoting *Winter v. FloorPro, Inc.*, 570 F.3d 1367, 1371 (Fed. Cir. 2009)). "[T]he real party-in-interest principle is a means to identify the person who possesses the right sought to be enforced." *Agility Logistics Services Co. KSC*, ASBCA 57415, *et al.*, 17-1 BCA ¶ 36,658 (quoting 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1542 (3d ed. 2010)). The appellant in this case, USATS, is the contractor, and under the CDA, USATS is the real party in interest.

USATS' representative is not the contractor in this appeal, and his ability to represent the appellant is governed by the Board's rules. Under those rules, "[a] corporation, trust, or association may appear by one of its officers." Rule 5(a)(1) (48 CFR 6101.5(a)(1) (2019)). USATS' representative has identified himself as the chief executive officer (CEO), and the Board's rules allow him to appear for appellant.

DOS contends that USATS' representative has failed to show that he can receive payment to a personal bank account, but such an assertion is not sufficient to warrant dismissal. The Board's ruling on a motion to dismiss will draw conclusions from the facts alleged, with reasonable inferences in favor of appellant, to determine if the facts "support a facially 'plausible' claim to relief." *TranBen, Ltd. v. Department of Transportation*, CBCA 5448, 17-1 BCA ¶ 36,635 (quoting *Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009)). In drawing all inferences in favor of appellant with respect to alleged facts, the Board finds that the requirements for bringing an appeal under the CDA and the Board's rules have been met. Although DOS contends that USATS' representative has failed to show that he has a legal right to collect invoice payments, the record in this matter is not sufficiently developed to make such a finding.

Decision

The Government's motion to dismiss this appeal is **DENIED**.

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