



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

APPEALS CONSOLIDATED; DISMISSED FOR LACK OF JURISDICTION:
March 13, 2024

CBCA 7971, 7985

ROCK SUPREMACY LLC,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

Rowan Anderegg, Owner and Managing Member of Rock Supremacy LLC, Bend, OR, appearing for Appellant.

Rayann L. Speakman, Office of the Chief Counsel, Federal Highway Administration, Department of Transportation, Vancouver, WA, counsel for Respondent.

Before Board Judges **SHERIDAN**, **SULLIVAN**, and **CHADWICK**.

SULLIVAN, Board Judge.

On December 29, 2023, the Board docketed as CBCA 7971 an appeal by Rock Supremacy LLC (Rock). Because the notice of appeal appeared to be signed by an individual who was neither an attorney nor an authorized representative of the company, the Board issued an order directing Rock to show that the appeal complied with Board Rule 2(a) (48 CFR 6101.2(a) (2023)). In response to this order, Rock filed a new appeal which was docketed as CBCA 7985. The notice of appeal was signed by an individual identified as “the owner/managing member” and an officer of Rock.

The same contracting officer's decision was attached to both appeal notices. Since both appeals arise from the same decision, we consolidate the appeals under Rule 2(f).

In response to the second appeal, respondent, the Department of Transportation (DOT), filed a motion to dismiss for lack of jurisdiction, asserting that Rock was a subcontractor on the contract underlying the contracting officer's decision on appeal. Rock failed to respond to the motion, despite two orders from the Board directing that it do so. We decide the motion in the absence of a response from Rock. *Forestall Co.*, AGBCA 84-327-1, 85-2 BCA ¶ 18,128, at 90,984; *Leonard Pevar Co.*, GSBCA 1811, 66-1 BCA ¶ 5445, at 25,516.

Pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), the Board has jurisdiction to decide appeals brought by contractors from contracting officers' decisions. *Id.* § 7105(e)(1)(B). A contractor is defined as “a party to a Federal Government contract other than the Federal Government.” *Id.* § 7101(7). Those entities “who are not in privity of contract with the government cannot avail themselves of the CDA's appeal provisions.” *Winter v. FloorPro, Inc.*, 570 F.3d 1367, 1371 (Fed. Cir. 2009). In general, subcontractors on government contracts are not in privity with the Government. *Eagle Peak Rock & Paving, Inc. v. Department of the Interior*, CBCA 2770, 12-2 BCA ¶ 35,146, at 172,521.

The contracting officer's decision is addressed to Conway Construction Co. and describes Rock as a subcontractor on the contract. Notices of Appeal, Attachment A at 1, 4. Rock does not allege facts to the contrary. *See id.*; *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1352-53 (Fed. Cir. 2011) (non-frivolous allegations as to the existence of a contract with the Government required for Board's CDA jurisdiction). Because Rock, as a subcontractor, lacks privity with the Government, we do not have jurisdiction to consider its appeal of the contracting officer's decision.

Decision

The appeals are **CONSOLIDATED** and **DISMISSED FOR LACK OF JURISDICTION**.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge