



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: June 30, 2025

CBCA 8366

UNLIMITCOMP, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Mark W. Bernlohr and Clay K. Keller of Jackson Kelly PLLC, Akron, OH, counsel for Appellant.

Laetitia C. Coleman, Office of General Counsel, Department of Veterans Affairs, Arlington, TX, counsel for Respondent.

Before Board Judges **O'ROURKE**, **KANG**, and **VOLK**.

**O'ROURKE**, Board Judge.

Appellant, UnlimitComp, LLC (UnlimitComp), appealed the denial of its claim for costs relating to a subcontract it had with a party to a federal contract. Respondent, the Department of Veterans Affairs (VA), filed a motion to dismiss the appeal for lack of jurisdiction due to appellant's status as a subcontractor. Instead of responding to the VA's motion, appellant requested a voluntary dismissal of its appeal without prejudice, asserting that a dismissal for lack of jurisdiction is essentially a dismissal without prejudice. The Board's rules prioritize a dismissal on jurisdictional grounds regardless of the parties' views on disposition. Because we find that we lack jurisdiction to decide this appeal, we dismiss it for lack of jurisdiction.

### Background

The VA awarded a contract to AmFirst Cornerstone Joint Venture One, LLC (ACJV), on February 22, 2023. The purpose of the contract was to perform specified electronic health records modernization (EHRM) infrastructure upgrades at the Black Hills Veterans Affairs Medical Center in Meade County, South Dakota. UnlimitComp is an Ohio limited liability company engaged in the business of providing information systems hardware and software.<sup>1</sup> Two months after the VA awarded the contract to ACJV, UnlimitComp and one of the joint venture partners, American First Contracting, Inc. (AmFirst), a service-disabled veteran-owned small business based in Illinois, entered into a subcontract agreement in support of the ACJV contract. UnlimitComp maintains that in performing work on the EHRM contract as a subcontractor, it incurred costs in the amount of \$517,132 and provided a \$2.5M payment and performance bond for the duration of the project.

In January 2024, the VA terminated the ACJV contract for convenience. The VA and ACJV reached an agreement on a termination settlement proposal, and the VA paid the settlement. ACJV did not sponsor a claim on behalf of UnlimitComp as part of that termination settlement negotiation, and neither ACJV nor the VA returned UnlimitComp's performance bond. The VA stated that ACJV signed a release of claims pursuant to the payment of the settlement.

The record includes emails from January 2025—one year after the contract was terminated—between UnlimitComp and representatives from the other partner of the Illinois joint venture, Cornerstone Contracting, Inc. (Cornerstone). The VA is copied on some, but not all, of the email messages that pertain to subcontractor payments. In one particular message to UnlimitComp, a Cornerstone representative referred to a payment in the amount of \$146,014.48, stating, "This is a final payment per the Federal Government that we have received on your behalf." In another email message, the Cornerstone representative stated, "This is the final payment issued by the Government, which is well documented." But the representative did not provide to appellant any documentation relating to the proposed payment. The representative stated, "As this is a final payment, per your contract, you are required to sign a final release." A release of claims was attached to the email. Appellant responded that it was willing to accept the offer of \$146,014.48 as a *partial* payment but would not accept that amount as the final payment. Appellant also refused to sign the release and demanded that its bond be returned.

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<sup>1</sup> But see Exhibit A to the Notice of Appeal and Complaint, "Subcontractor Agreement," which states: "Subcontractor is a licensed & Bonded Electrical Construction Company in the State of Michigan."

On March 3, 2025, appellant filed an appeal with the Board based on an alleged contracting officer's final decision. One month later, the VA filed a motion to dismiss the appeal for lack of jurisdiction based on the fact that appellant was not a party to respondent's contract with ACJV, and therefore, appellant had no standing to file an appeal with the Board pursuant to that contract. On April 22, 2025, the Board issued an order establishing a deadline of May 16, 2025, for appellant's response to the VA's motion. Instead of responding to the motion, however, appellant filed on May 16, 2025, a notice of voluntary dismissal without prejudice, expressing its intent to re-file its claim in a different forum as a third-party beneficiary of a government contract.

### Discussion

Pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), the Board has jurisdiction to decide a contractor's appeal from a final decision issued by a contracting officer. *Id.* § 7104(a). The CDA defines "contractor" as "a party to a Federal Government contract other than the Federal Government." *Id.* § 7101(7). If an appellant does not allege that it is a contractor in privity with the Federal Government, the Board lacks jurisdiction to hear its appeal under the CDA. *Allred v. Department of Veterans Affairs*, CBCA 4952, 15-1 BCA ¶ 36,108, at 176,282-3.<sup>2</sup>

Here, appellant does not allege that it is a contractor in privity with the Government. Rather, appellant acknowledges that it entered into a subcontract with AmFirst to support the VA's project and refers to itself as a subcontractor throughout its notice of voluntary dismissal. "[S]ubcontractors are generally not in privity of contract with the government." *Winter v. FloorPro, Inc.*, 570 F.3d 1367, 1371 (Fed. Cir. 2009); *see also Southern California Federal Savings & Loan Association v. United States*, 422 F.3d 1319, 1328 (Fed. Cir. 2005) ("A plaintiff must be in privity with the United States to have standing to sue the sovereign on a contract claim."). Although one of the prime contractors alluded to a final payment

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<sup>2</sup> *Cf. Avue Technologies Corp. v. Health and Human Services*, CBCA 8087(6360)-REM, et al., 24-1 BCA ¶ 38,617, at 187,710 (Board denied respondent's motion to dismiss for lack of jurisdiction because appellant was not pursuing its claim as a subcontractor, but rather as a contractor in privity of contract with the Government based on its end user licensing agreement with the agency). As the Board explained in *Avue*, "allegations of the existence of a contract suffice to take the claim out of the realm of subcontractor claims and into the world of claims within our CDA jurisdiction." *Id.* (quoting *Avue Technologies Corp. v. Health and Human Services*, CBCA 6360, 19-1 BCA ¶ 37,375, at 181,706)).

from the Federal Government that the prime contractor received on appellant's behalf, we do not interpret this to mean that ACJV sponsored appellant's claim. Nor does appellant make that assertion.

“Once we are aware that we lack jurisdiction to entertain an appeal, we have ‘no other recourse but to dispose of the case by dismiss[ing]’ it based upon the jurisdictional defect, without reaching the merits of the parties’ dispute.” *MINACT, Inc v. Department of Labor*, CBCA 7575, 23-1 BCA ¶ 38,243, at 185,701 (2022) (quoting *Duke University v. Department of Health and Human Services*, CBCA 5992, 18-1 BCA ¶ 37,023, at 180,291). Because appellant, as a subcontractor, lacks privity of contract with the agency on the EHRM contract, we are without jurisdiction to consider appellant's appeal.

Furthermore, turning to the issue of prejudice, we agree with appellant that “[a]ny dismissal for lack of jurisdiction is, by necessity, without prejudice.” *Primary Rate v. Department of Commerce*, CBCA 7722, 23-1 BCA ¶ 38,390, at 186,535 (quoting *SRA International, Inc. v. Department of State*, CBCA 6563, et al., 20-1 BCA ¶ 37,543, at 182,314 n.1); *see also Scott Aviation v. United States*, 953 F.2d 1377, 1378 (Fed. Cir. 1992) (As a dismissal with prejudice is an adjudication on the merits, a court “cannot presume to dismiss [a] complaint with prejudice” when it lacks jurisdiction). Here, our dismissal for lack of jurisdiction is “by necessity” without prejudice.

#### Decision

This appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE

Board Judge

We concur:

Jonathan L. Kang

JONATHAN L. KANG

Board Judge

Daniel B. Volk

DANIEL B. VOLK

Board Judge