

U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



In the Matter of

GARRETT, SULLIVAN & COMPANY

CASE NO. 86-BCA-8

v.

U.S. DEPARTMENT OF LABOR

ORDER

By a motion received by the Board on November 5, 1986, the appellant seeks an order of joinder adding these public accounting concerns: Watson, Rice & Company; Asby, Armstrong, Johnston & Company; Mitchell, Titus and Company.

In support of its motion appellant says, in substance, that the companies it seeks to add were part of a September 27, 1979 consortium agreement which was tantamount to a "joint venture." As such, it argues, all are necessary parties to this suit. It further says that the respondent is seeking to recover 1.139 million dollars - most of which is attributable to actions of these companies.

Appellant cites a number of cases in support of its motion. However, none of these cases comes to grip with the essential argument raised against joinder: The Board does not have jurisdiction to entertain such a motion. It would be more appropriate in an Article III Court.

The cases cited by the appellant including C.W. Regan Inc. And Compudyne, 67-1 BCA 6151 (1967), largely reflect a voluntary situation where a subcontractor seeks to be added as a party to represent itself as the "real party in interest". However, these cases are the exception and should be considered on their special facts. A review of the precedents dealing with the issue reflects that subcontractors, or those similarly situated, do not have standing inasmuch as there is no privity of contract between themselves and the government. Main Cornice Works, Inc. (1964), ASBCA No. 9856, 65-1 BCA 4577. If it were otherwise, one might visualize large numbers of subcontractors litigating with the government and the resulting chaos to follow.

In this case, on July 31, 1986, the contracting officer supplemented his original November 13, 1985 decision by adding as joint and severally liable the concerns appellant now seeks to add. However, the contract is still not between those concerns and the Government but rather only between appellant and the Government. Even assuming arguendo this later decision does create privity between the individuals and the Government, such concerns have not appeared, as far as this Board is aware. Therefore, the dispute between them and the Government, such as might exist, is not ripe for adjudication at the Board's level. Only the taking of the appeal confers jurisdiction on the Board. Fox Emblem Co. (1943), WOBCA No. 87, 1 CCF. 57. If these individuals did appeal then certainly a motion to consolidate that case with the instant case would be in order. Allis Chalmers Mfg. Co. E. P. (1973), Eng. BCA Nos. 3420, 3421, 73-2 BCA 10,296.

The Board has gone on record requesting here a voluntary joinder, in lieu of any legal power to order it, because it would be expedient. Notwithstanding their disinclination to comply with the request, the concerns have indicated that they will fully cooperate in supplying information and assisting the appellant to defend this suit. If needed, the Board does have the authority to entertain an application to subpoena the cognizant individuals and the pertinent documents. Accordingly, the joinder motion is denied.

GLENN ROBERT LAWRENCE
Member Department of Labor Board
of Contract Appeals

I concur:

NAHUM LITT, Chairman
Department of Labor Board of
Contract Appeals

I concur:

EVERETTE EARL THOMAS, Vice Chairman
Department of Labor Board of
Contract Appeals

Dated: MAR 12 1987
Washington, D.C.

GRL:crg