

U.S. Department of Labor

Board of Contract Appeals
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Issue date: August 29, 2001

Case No. **2001-BCA-1**

In the Matter of:

GLENGARRY, INC.,
Appellant

CONTRACT NUMBER: AE-10009-00-20

Before: JOHN M. VITTON
Chief Administrative Law Judge

ORDER

Procedural Background

On March 1, 2001, the Board of Contract Appeals of the U.S. Department of Labor issued a Notice of Receipt of Appeal and Prehearing Order (hereinafter "notice and order"). The notice and order required, *inter alia*, that the complaint be filed with the Board -- and with the Associate Solicitor for Employment and Training -- within 30 days of receipt of the notice and order. If a complaint was not filed, the notice and order stated that the appeal letter would be treated as the complaint. The notice and order also directed that the Contracting Officer answer the complaint within 30 days of receipt (or within 60 days of receipt of the Board's notice and order if the appeal letter is deemed to be the complaint), and that all parties file a prehearing exchange within 90 days of the Board's notice and order.

On March 26, 2001, the Board received a large package from Appellant dated March 21, 2001, which appeared in form to be a prehearing exchange. The cover letter to this package indicates that a copy was sent to the Contracting Officer, but there is no indication that the Associate Solicitor was served.

On May 3, 2001, the Board received an Answer from the Associate Solicitor on behalf of the Contracting Officer. The Answer is a general denial based on treatment of Appellant's appeal letter as the complaint.

On May 17, 2001, the Board received from Appellant a letter dated May 8, 2001, stating that the March 21, 2001 submission was its complaint, and maintaining that the Contracting Officer did

not file an answer to the complaint within 30 days, and that the Contracting Officer's answer was 63 days after the Board's notice and order. The letter does not appear to request any sanction for a late answer.

On May 24, 2001, the Board received a letter from the Associate Solicitor on behalf of the Contracting Officer, responding to Appellant's May 8, 2001 letter to the Board. The Associate Solicitor's letter states that a clarification of why the Contracting Officer is in full compliance with the Board's order is being made because Appellant is requesting sanctions against the Department. The letter goes on to explain that, because the Contracting Officer did not receive notice of the filing of a complaint under 41 C.F.R. § 29-60.206-1, the Contracting Officer's attorney, on his own initiative, filed an answer to the appeal letter – 60 days after receipt of the Board's notice and order.

On June 5, 2001, the Board received Appellants' response to the Associate Solicitor's response complaining that the Associate Solicitor had mis-characterized its response to the notice and order as not in compliance with the Board's notice and order.

On June 1, 2001, the Board received the Contracting Officer's Prehearing Exchange.

On June 12, 2001, the Board received, the Contracting Officer's Motion to the "Board for an Order Authorizing His Request for the Production of Documents" pursuant to 41 C.F.R. § 29-60-215-2. The Board has no record of a response to this motion.

Rulings

1. The Complaint and Answer

Although the parties have filed a series of letters complaining that the other party did not comply with the prehearing notice or the regulations at 41 C.F.R. Part 29-60, a close reading of those letters does not review any motion for sanctions against the other party for procedural failures in regard to the filing of the complaint and answer. Moreover, I make the following findings:

- (1) Appellant's March 26, 2001 submission to the Board, even if intended as a complaint, was not in the form of a complaint. Accordingly, Appellant's appeal letter is deemed its complaint.
- (2) Since the appeal letter is deemed to be Appellant's complaint, the Contracting Officer had 60 days from the date of receipt of Board's notice and order to file an answer. The Contracting Officer's attorney avers that it placed the answer in the mail on May 2, 2001, which is a timely submission of an answer. There is no evidence in the record that such a timely mailing was not made, and I accordingly find that the answer was timely filed.

2. *Applicability of 41 C.F.R. Part 29-60*

A number of the filings made in this matter have been premised on the application of 41 C.F.R. Part 29-60.

The Department of Labor Acquisition Regulation System is published in 48 C.F.R. Chapter 29. 48 C.F.R. § 2933.203.70 designates the Department of Labor Board of Contract Appeals (LBCA) to determine appeals from decisions of contracting officers arising under or relating to contracts made by the Department. It specifies that the LBCA rules of procedure are contained in 41 C.F.R. Part 29-60.

Prior to July 1985, 41 C.F.R. Chapter 29 contained the procurement regulations and procedures specifically applicable to the Department of Labor. That chapter, which includes Part 29-60, has not been published in the Federal Register since 1984. 41 C.F.R. Part 29-60 contains the Procedures for Settling Contract Dispute Appeals and Departmental regulations establishing the LBCA, as promulgated prior to the enactment of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601 et seq.

Subpart 29-60.2 constituted the Rules of the LBCA. Because those rules are, in part, inconsistent with provisions of the subsequently enacted Contract Disputes Act, they are, in practice, only referred to by the Board for certain limited purposes peculiar to contract appeals. Otherwise, parties to contract appeals are generally advised that, to the extent practicable, 29 C.F.R. Part 18, Rules of Practice and Procedure in Administrative Hearings Before the Office of Administrative Law Judges, currently provide guidelines for the procedural aspects of contract appeals before the LBCA.

In the instant proceeding, the Board issued a boilerplate Notice of Receipt of Appeal and Prehearing Order, citing therein 41 C.F.R. Part 29-60. The parties are advised, however, that the procedures stated in Part 29-60 are not binding as process unless specifically imposed by order of the Board, and that for general matters of procedure they should consult 29 C.F.R. Part 18.

Request for Order Authorizing Production of Documents

The Contracting Officer's request for an order of the Board authorizing the production of documents is premised on 41 C.F.R. § 29-60.215-2, which requires an order from the Board for such discovery. As noted above, however, Part 29-60 has limited viability. Rather, the parties should consult the rules of practice at 29 C.F.R. Part 18 in regard to discovery. Section 18.14 permits parties to engage in discovery unless limited by order of the presiding administrative law judge. I hold, therefore, that the Contracting Officer does not need to obtain an order from the Board in order to commence discovery in this matter, and therefore his motion for such an order is denied as moot.

Other Matters

Both parties have used the wrong Case No. when filing letters and motions with this Board. The parties are directed to use care in future filings to use the correct Case No. of "2001-BCA-1" to prevent the misfiling of documents in the wrong case file.

A subsequent order will schedule the time, date and place of hearing. In the meantime, the parties may commence discovery in compliance with the rules of practice at 29 C.F.R. Part 18.

SO ORDERED.

On behalf of the Board:

JOHN M. VITTON
Chief Administrative Law Judge
and
Chair, Labor Board of Contract Appeals