

CLIENT ALERT

“Mere allegations of fraud do not divest the Board of jurisdiction” – Government’s Motion to Dismiss Denied When It Cannot Prove that Appeal Resolution Depends on a Factual Determination of Fraud

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In *GSC Constr., Inc.*, ASBCA No. 62530 (Mar. 1, 2021), the Armed Services Board of Contract Appeals (the Board) denied the Government’s motion to dismiss for lack of jurisdiction. The contractor submitted a certified claim to the contracting officer (CO) that included costs associated with a change order, and then subsequently filed an appeal with the Board from the CO’s deemed denial of the claim. The Government filed a motion to dismiss, alleging that the Board lacked jurisdiction to hear the appeal because it would “necessarily” have to make a determination of fact as to whether the contractor had made false claims and/or false statements in support of its claim.

The Board agreed that making a factual determination of fraud is beyond its jurisdiction, but disagreed that it would need to make that factual determination to resolve the appeal. Instead, the Board held that the appeal presented an issue of contract interpretation – specifically, whether a subset of work was part of the contract or extra work. The Board further stated that it could “consider” statements submitted by the contractor’s president and owner, but that it did not have to decide the ultimate question of whether the statements were fraudulent or false to decide whether the work at issue was outside the scope of the contract, and thus, the appeal was properly before it.

This case underscores that in cases involving parallel investigations, “mere allegations of fraud do not divest the Board of jurisdiction.”

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