

Fed. Circ. Revives Army Corps Contracting Row

By **Kaitlyn Burton**

Law360 (July 18, 2019, 5:54 PM EDT) -- The Federal Circuit has breathed new life into a contractor's dispute with the Army Corps of Engineers over \$4.1 million the firm says it is owed, finding that an armed services appeals board made a mistake in concluding it didn't have jurisdiction.

A three-judge panel on Wednesday reversed last year's ruling by the Armed Services Board of Contract Appeals dismissing Hejran Hejrat Co. Ltd.'s appeal. The board had said it lacked jurisdiction because the contractor failed to ask the contracting officer to make a final decision on its request for additional compensation.

However, the panel found "there was a request for a final decision by a contracting officer and a final decision entered by the contracting officer," and remanded the case for further proceedings.

The dispute stems from the contractor's 2011 deal with the Corps to provide transportation services in Afghanistan, according to the decision. But after that contract expired, HHL asked the Corps for more cash, about \$4.1 million, alleging contract violations such as suspension of work, contract requirement changes and termination of the initial deal.

HHL submitted a request in March 2015, which the contracting officer denied more than two years later in what the officer called the "government's final determination in this matter," the decision notes.

The contractor then appealed to the board. In April 2018, the board dismissed the appeal, saying it didn't have jurisdiction since "at no point, in six years of communication with the Corps, has HHL requested a contracting officer's final decision," according to the board's ruling.

The government has argued the contractor's 2015 request wasn't a request for a final decision. This would be an issue because, as Wednesday's decision explains, a contracting officer has to make a final decision on a claim for the board to have jurisdiction.

"HHL's March 5 submission constituted a request for a final decision by the contracting officer, and the contracting officer's denial of that submission was a final decision on a claim. The board erred when it concluded that it did not have jurisdiction over HHL's appeal," the panel held.

Representatives for HHL and the Corps declined to comment.

Judges Pauline Newman, Timothy B. Dyk and Evan J. Wallach sat on the panel for the Federal Circuit.

HHL is represented by Joseph Hennessey of the Law Office of Joseph Hennessey LLC.

The Corps is represented by Jessica R. Toplin of the Department of Justice's Civil Division.

The case is Hejran Hejrat Co. Ltd. v. U.S. Army Corps of Engineers, case number 18-2206, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Marygrace Murphy.

