

Court Greenlights Plaintiff's Amended Reply to Government's Counterclaim

In a contract breach lawsuit, the U.S. Court of Federal Claims recently denied Plaintiff's motion for summary judgment regarding the Government's counterclaim, Plaintiff's motion to dismiss the counterclaim, and the Government's motion for summary judgment on its counterclaim. At the end of the day, the only motion granted was one motion filed by Plaintiffs, AEY, Inc., to amend its reply to the Government's counterclaim.

The facts that gave rise to these motions involve a contract dispute in which AEY, Inc. contends that the U.S. Army wrongfully withheld payment on two invoices it submitted for ammunition delivery to the Army for use by Afghan troops and police. The Government contends that AEY forfeited its right to recover payment because two invoices pertain to a contract tainted by fraud and a criminal conviction obtained in a U.S. District Court in the Southern District of Florida. The Government counterclaimed for damages under the False Claims Act, 31 U.S.C. § 3729.

The contract in dispute was entered into on January 26, 2007. Under its agreement, AEY was to provide non-standard ammunition for use by the Afghan National Army and Afghan National Police. AEY apparently completed several successful delivery orders under the contract but for two of the shipments, the Government failed to make payment. The Government claimed that those munitions delivered were manufactured by Chinese military companies, and thus violated the contract. On May 23, 2008, the Army terminated the contract. Three months later, AEY pled guilty in a Florida district court proceeding for conspiracy to make false statements, to commit major fraud against the U.S., and conspiracy to commit wire fraud.

The present lawsuit was filed in the CFC on October 28, 2010. As part of this lawsuit, AEY sought to vacate, set aside, and correct its judgment of conviction and sentence in the criminal case by amending its reply to the counterclaim. Following extensive briefing by both parties, the trial court decided to allow AEY to amend to its reply.

The court explained that “[d]espite the potential futility of AEY’s argument that it did not ‘acquire’ ammunition from a communist Chinese military company, the court will allow AEY to file its amendment counterclaim reply.” The Court based its ruling on Rule 15(a) itself, which requires the court to “freely give leave when justice so requires.” Having concluded that the requirement of Rule 15(a) had been met, the court granted to motion to amend. Similarly, after a careful review of each party’s arguments, the trial court concluded that there were material facts in dispute that precluded the granting of summary judgment under Rule 56 to either party.

To read the decision, click [here](#).