



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO COMPEL DENIED: August 13, 2020

CBCA 6809

S & DF PROPERTIES, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Steve Forti, Managing Member of S & DF Properties, LLC, El Paso, TX, appearing for Appellant.

Jay Bernstein, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY**, **HYATT**, and **ZISCHKAU**.

BEARDSLEY, Board Judge.

Appellant has moved to compel alternative dispute resolution (ADR) pursuant to Civilian Board of Contract Appeals (CBCA) Rules 8 and 54 (48 CFR 6101.8, .54 (2019)). The Government, however, is unwilling to participate in ADR in this appeal and argues that it cannot be compelled to participate. The Government also asserts that ADR is counterproductive when forced on unwilling participants. *See In re African American Slave Descendants' Litigation*, 272 F. Supp. 2d 755, 759 (N.D. Ill. 2003) (citing *In re Atlantic Pipe Corp.*, 304 F.3d 135, 143 (1st Cir. 2002)). We agree with the Government.

Participation in ADR at the CBCA is voluntary. CBCA Rule 54 requires the parties to jointly request ADR and to agree on an ADR method and procedures. The Government has not agreed to request or participate in ADR. While the CBCA makes ADR available to the parties as an alternative to litigation and often encourages the parties to resolve disputes using ADR, the Board will not, and has no authority to, compel the Government to participate in ADR.

Decision

The motion to compel ADR is **DENIED**.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

We concur:

Catherine B. Hyatt

CATHERINE B. HYATT

Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge