

ARMED SERVICES BOARD OF CONTRACT APPEALS

Tanik Construction Company, Inc.

ASBCA No. 64203 · No. ASBCA No. 64203 · Decided May 26, 2026

SUMMARY

The Armed Services Board of Contract Appeals dismissed Tanik Construction Company, Inc.’s appeal seeking extraordinary contractual relief under FAR Part 50, DFARS Part 250, and Public Law 85-804. The Board held that the request was not a claim under the Contract Disputes Act and that relief under Public Law 85-804 is discretionary and not subject to judicial review. The decision also concluded that the Board lacked jurisdiction over the appeal.

CASE DETAILS

COURT	Armed Services Board of Contract Appeals
WRITING FOR THE COURT	J. Reid Prouty; Thomas P. McLish; Michael N. O'Connell
JURISDICTION	Armed Services Board of Contract Appeals
DECIDED	May 26, 2026
DOCKET	ASBCA No. 64203
DISPOSITION	dismissed
PROCEDURAL POSTURE	The government moved to dismiss Tanik's appeal for lack of jurisdiction, arguing that Tanik sought extraordinary contractual relief under Public Law 85-804 and FAR Part 50 rather than relief under the Contract Disputes Act.
STANDARD OF REVIEW	When jurisdiction is challenged, the appellant bears the burden of establishing jurisdiction by a preponderance of the evidence. The Board accepts undisputed complaint facts as true, draws reasonable inferences for the nonmoving party, and may inquire into disputed jurisdictional facts and engage in fact-finding based on the record.
PRECEDENTIAL VALUE	Published Armed Services Board of Contract Appeals opinion
PARTIES	Tanik Construction Company, Inc. v. United States

TOPICS

- government contracts
- contract disputes act
- appellate jurisdiction
- administrative law
- standard of review

PRACTICE AREAS

government contracts

contract disputes act

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Tanik's claim for extraordinary contractual relief under FAR Part 50, DFARS Part 250, and Public Law 85-804 was a claim under the Contract Disputes Act within the Board's jurisdiction.
2. Whether the Board possesses jurisdiction to review an agency's failure to grant discretionary extraordinary contractual relief under Public Law 85-804.
3. Whether Tanik could recharacterize its extraordinary-relief claim as conventional contract claims after the government moved to dismiss.

HOLDINGS

1. Tanik's claim was a request for extraordinary contractual relief under Public Law 85-804, FAR Part 50, and DFARS Part 250, not a claim under the Contract Disputes Act. Because Tanik did not submit a valid CDA claim, the Board lacked jurisdiction over the appeal.
2. The Board lacks jurisdiction to review requests for extraordinary contractual relief under Public Law 85-804 because such relief is committed to the exclusive discretion of the executive branch and is not subject to judicial review.
3. The Board could not exercise CDA jurisdiction over claims sounding in tort, and Tanik's allegations of business destruction, fraud, and emotional distress did not establish jurisdiction.

KEY QUOTATIONS

“Indeed, the two types of requests for relief (i.e., extraordinary contractual relief and a CDA claim) are mutually exclusive.” (at 7)

“Thus, it is well-settled that “any action or decision by an agency under Public Law No. 85-804 is within the exclusive discretion of the executive branch of the government and is not subject to judicial review.”” (at 8-9)

“Regardless of how Tanik seeks to reframe it now, its claim for extraordinary contractual relief, relying on FAR Part 50 and DFARS 250.1, is a request for extraordinary contractual relief under Public Law 85-804 and is not a CDA claim.” (at 9)

FACTUAL BACKGROUND

The Army Corps of Engineers awarded Tanik a contract and a task order for apron improvements at Coast Guard Station Kodiak, Alaska. After disputes concerning an alleged differing site condition, the parties executed bilateral change orders containing releases, and Tanik pursued an earlier CDA claim that was later settled. The settlement preserved Tanik's claim for extraordinary contractual relief, which sought \$4,390,543.27 for alleged business destruction, lost contracts, lost assets, fraud, and emotional distress. The claim expressly invoked FAR Part 50 and DFARS Part 250 and did not invoke the CDA or the disputes clause.

PROCEDURAL HISTORY

The Corps awarded Tanik a multiple-award task order contract and later denied a certified CDA claim based on releases. In an earlier appeal, the Board denied the government's summary-judgment motion, after which the parties settled and dismissed that appeal with prejudice while preserving Tanik's claim for extraordinary contractual relief. The Corps did not grant the requested extraordinary relief, and Tanik appealed to the Board. The Board dismissed the present appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Tanik Constr. Co., ASBCA No. 62527, 22-1 BCA ¶ 38,147 at 185,284
- BCC-UIProjects-ZAAZTC Team JV, ASBCA No. 62846, 22-1 BCA ¶ 38,119 at 185,171
- Tetra Tech EC, Inc., ASBCA Nos. 62449, 62450, 21-1 BCA ¶ 37,900 at 184,054
- Gen. Mills, Inc. v. United States, 957 F.3d 1275, 1284 (Fed. Cir. 2020)
- Reynolds v. Army Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)
- Estes Express Lines v. United States, 739 F.3d 689, 692 (Fed. Cir. 2014)
- Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir. 1991)
- CCIE & Co., ASBCA Nos. 58355, 59008, 14-1 BCA ¶ 35,700 at 174,816
- Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241 at 173,016
- H.L. Smith, Inc. v. Dalton, 49 F.3d 1563, 1564-65 (Fed. Cir. 1995)
- Reflectone, Inc. v. Dalton, 60 F.3d 1572 (Fed. Cir. 1995) (en banc)
- Evans Reamer & Mach. Co. v. United States, 386 F.2d 873, 878 n.8 (Ct. Cl. 1967)
- Coastal Corp. v. United States, 713 F.2d 728, 731 (Fed. Cir. 1983)
- Winder Aircraft Co. of Fla. v. United States, 412 F.2d 1270 (Ct. Cl. 1969)
- Bolinders Co. v. United States, 153 F. Supp. 381 (Ct. Cl. 1957)
- Murdock Mach. & Eng'g Co. of Utah v. United States, 873 F.2d 1410, 1413 n.1 (Fed. Cir. 1989)
- E.M. Scott & Assocs., Inc., ASBCA No. 45869, 94-1 BCA ¶ 26,258 at 130,602
- Eichleay Corp., ASBCA No. 5183, 60-2 BCA ¶ 2,688