

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Corbett Technology Company, Inc.) ASBCA No. 49478
)
Under Contract No. DAAH01-88-D-0002)

APPEARANCE FOR THE APPELLANT: Mr. Kenneth A. Corbett
Vice President

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
LTC Richard B. O'Keeffe, Jr., JA
MAJ Thomas C. Modeszto, JA
CPT Melissa A. Miller, JA
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE TODD
ON APPELLANT'S MOTION FOR RECONSIDERATION

Appellant has filed a motion to reconsider our decision denying appellant's claim for reimbursement of cost overruns allegedly caused by defective Government-furnished equipment and an acceleration order. Our denial was based on appellant's lack of notice to the Government that it would exceed the revised ceiling price in the delivery order and appellant's failure to show that Government actions caused it to incur the extra costs. *Corbett Technology Company, Inc.*, ASBCA No. 49478, 00-1 BCA ¶ 30,801. Appellant's motion seeks the introduction of new evidence, requests reinstatement of another appeal and investigation of obstruction of justice in that appeal, argues for several revisions of the Board's findings of fact, and presents a new argument that the Government acted in bad faith. The Government has responded that nothing set forth in the motion is good cause to set aside any of the Board's findings of fact or legal conclusions and argues that the motion for reconsideration should be denied.

In its motion appellant's seeks consideration of five new documents alleging that it was subjected to extreme prejudice when Government counsel requested an early hearing date and identified the contracting officer as an additional witness. Appellant claimed inexperience and that it agreed to the hearing date without recognizing the impact on its ability to prosecute its claim. The record was closed at the end of the hearing. It is too late for appellant to present these documents to the Board. We require a showing of compelling reason to take the exceptionally rare action of reopening the hearing record to receive additional documentary evidence. *Hensel Phelps Construction Company*,

ASBCA No. 49270, 00-1 BCA ¶ 30,733; *Northeast Air Group, Inc.*, ASBCA No. 46350, 95-2 BCA ¶ 27,916. Appellant has not shown a compelling reason to admit new evidence based upon the timing of the hearing, or otherwise.

The documents offered allegedly support appellant's requests to reopen the record in ASBCA No. 47742 and investigate the alleged obstruction of justice in that appeal by the contracting officer. Appellant's requests are misplaced in this appeal as they concern an entirely different appeal and a different contract. The Board dismissed the appeal in ASBCA No. 47742 without prejudice to appellant's filing a valid claim. *Corbett Technology Company, Inc.*, ASBCA No. 47742, 95-1 BCA ¶ 27,587. Appellant is also asking the Board to conduct an investigation, but we have no jurisdiction to grant that relief. *Stinson Electronics Company, Inc.*, ASBCA No. 27363, 83-1 BCA ¶ 16,331 (contractor sought investigation of procurement procedures used by the PCO).

In its motion appellant proposes revisions to the Board's findings of fact. The Government argues that there is no reason to believe that the Board failed to fully and fairly consider the evidence in the record or that appellant's personal view of the evidence renders defective any of the Board's findings of fact. The Government states that the findings of fact should not be disturbed.

We have carefully reviewed appellant's proposed revisions to findings 4, 5, 6 and 10. Appellant has not demonstrated any material mistake in these findings, but merely stated its disagreement with the Board's factual determinations, which is not a basis for relief. We consider appellant's comments with respect to findings 14 and 15 minor matters that could have no possible impact on the outcome of the appeal.

Appellant offers proposed additions to our findings 17 and 23 to support its allegation of bad faith. Appellant reiterates its previous argument that Mr. McIngvale was biased against appellant and now claims on reconsideration that his action deliberately maligned and damaged appellant, was arbitrary and capricious, and should be considered bad faith. We find no basis to make additional findings of fact. We cannot infer from Mr. McIngvale's action or testimony that he was biased against appellant or that his opinion of the performance of the cuer or his discussion of that opinion with his colleagues injured appellant's reputation.

We understand appellant's motion seeks reversal of the Board's decision in order to make appellant whole for the alleged wrongful action of Mr. McIngvale. We have found no factual support for appellant's allegation of bad faith by the Government.

After considering appellant's submission, we find that its motion is not properly based upon any newly discovered evidence or legal theories the Board failed to consider

in issuing its prior decision, and presents no basis for altering our decision. We, therefore deny the motion for reconsideration.

Dated: 28 July 2000

LISA ANDERSON TODD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

PETER D. TING
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 49478, Appeal of Corbett Technology Company, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals