

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Environmental Safety Consultants, Inc.) ASBCA No. 53485
)
Under Contract No. N62472-90-C-5164)

APPEARANCE FOR THE APPELLANT: Mr. Peter C. Nwogu
President

APPEARANCES FOR THE GOVERNMENT: Susan Raps, Esq.
Navy Chief Trial Attorney
Ellen M. Evans, Esq.
Trial Attorney
Naval Facilities Engineering
Command
Litigation Headquarters
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE TODD
ON THE GOVERNMENT'S MOTION FOR RELIEF FROM JUDGMENT

The government has filed a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure alleging that the Board's decisions in the subject appeal contain errors so numerous and significant that allowing them to stand would be fundamentally unjust. We interpret the motion as one under Rule 60(b)(6). The government has not alleged, and we have not found, extraordinary or exceptional circumstances which would qualify as a reason for justifying relief under Rule 60(b)(6). *See, e.g., Ackermann v. United States*, 340 U.S. 193, 199 (1950); *Swanson Group*, ASBCA No. 53254, 02-1 BCA ¶ 31,838 at 157,308.

Having reviewed the government's motion, we find it amounts to no more than a second motion for reconsideration of our 8 March 2005 decision (05-1 BCA ¶ 32,903) which decided the amount of equitable adjustment to which appellant had been held entitled on 29 February 2000 in ASBCA No. 47498 (00-1 BCA ¶ 30,826). In our 15 September 2005 decision on the parties' cross-motions for reconsideration, we modified our previous ruling. The government does not challenge the reconsideration decision, but alleges errors in the Board's prior rulings. The government is not entitled to a second reconsideration of those rulings. *Kirk Brothers Mechanical Contractors, Inc.*, ASBCA Nos. 47801, 48243, 96-2 BCA ¶ 28,375 at 141,698; *Clyde P. Thomas*, ASBCA No. 28296, 88-3 BCA ¶ 21,179 at 106,881.

To the extent the government's motion can also be interpreted as one for reconsideration of the Board's decision on entitlement, it is untimely. Board Rule 29; *Campbell Plastics Engineering & Mfg., Inc.*, ASBCA No. 53319, 03-2 BCA ¶ 32,407.

The government's motion is denied.

Dated: 26 October 2005

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

EUNICE W. THOMAS
Administrative Judge
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. 53485, Appeal of Environmental Safety Consultants, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals