ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Hunt Building Company, Ltd.	)	ASBCA No. 54245
	)	
Under Contract No. N62467-00-C-0416	)	

APPEARANCE FOR THE APPELLANT: Jonathan D. Schwartz, Jr., Esq.
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El Paso, TX

APPEARANCES FOR THE GOVERNMENT: Susan Raps, Esq.
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OPINION BY ADMINISTRATIVE JUDGE TODD
ON APPELLANT'S MOTION FOR RECONSIDERATION

Appellant Hunt Building Company, Ltd. filed a timely motion for reconsideration of our decision, dated 15 June 2005, which denied its appeal concerning the government's requirements for the site boundaries for appellant's construction of certain family housing units. *Hunt Building Company, Ltd.*, ASBCA No. 54245, 05-2 BCA ¶ 32,987. Familiarity with that decision is presumed. The grounds of appellant's motion are that the decision was erroneous as a matter of law and not supported by substantial evidence. The government has opposed the motion on the basis that the Board's findings were based on the record in the appeal and dictate as a matter of law the conclusion that the appeal be denied.

We assess a motion for reconsideration against the standard of whether the motion is based on newly discovered evidence or errors in our fact findings or legal theories which the Board failed to consider in its original decision. It is not the purpose of reconsideration to afford a party the opportunity to reargue contentions that were fully considered and rejected by the Board. *ITT Avionics Division*, ASBCA Nos. 50403, 50961, 52468, 03-2 BCA ¶ 32,378.

Appellant submits that the Board failed to address a contemporaneous interpretation allegedly made by the government in evaluating appellant's proposal and accepting it for award which appellant maintains bound the government to follow the project limits shown on the Site 4 RV Park drawing. Appellant relies on the decision in *Leopold Construction Company, Inc.*, ASBCA No. 23705, 80-2 BCA ¶ 14,614, that by approving appellant's concept drawings without comment, the government manifested an interpretation of the specifications on which appellant was entitled to rely in performing its detailed design. The general rule is that government approval of a contractor's drawings does not act as a waiver of contract requirements. *See Meredith Construction Company, Inc.*, ASBCA No. 40263, 90-3 BCA ¶ 23,216 at 116,502. A specific provision in the solicitation for appellant's contract stated that acceptance of proposal documents did not waive the RFP requirements. The standard contract clause at DFARS 252.236-7001, CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000), incorporated by reference in the contract, specified that appellant would be responsible for errors occasioned by a failure to check all drawings that were furnished, compare them before laying out the work, and notify the contracting officer of any discrepancies.

The case cited by appellant is distinguishable on the facts and does not support its position. In *Leopold*, the contractor submitted concept drawings after award of the contract that were not required by the contract. The drawings reflected the contractor's interpretation of the specifications but did not point out questions about the specifications that were of concern. The contractor submitted the concept drawings for the purpose of obtaining approval of a preliminary design and resolving areas of design uncertainty. The government was under no contractual obligation to comment on the drawings. When they were returned to the contractor without comment, the subcontractor involved assumed that the government concurred with its interpretation of the specifications and relied on the government's approval in finalizing its design. The government reversed its prior approval of the concept drawings in its comments on the final design drawings. The Board held the contractor entitled to recovery of predesign costs. Unlike the contractor in *Leopold*, appellant did not volunteer a site plan to obtain government approval of its interpretation of the specifications, but merely included a site drawing in its proposal submitted for award of the contract. Appellant's site plan did not conform to the General Development Map and was not clear evidence of appellant's interpretation of the RFP requirements for the site boundaries. In its review of appellant's proposal and determination of its acceptability for contract award, the government did not make a contemporaneous interpretation that was in conformance with appellant's understanding of the RFP requirements. After acceptance of appellant's proposal, under the terms of the contract awarded, the contractor remained responsible for compliance with the specifications. There was no contrary contemporaneous interpretation of the specifications that was binding on the government.

Appellant also objects to the Board's determination that the project location in the contract was plain and unambiguous. To the extent it may not have been, the ambiguity was patent with an obligation on appellant, which we determined appellant failed to fulfill, to seek clarification. Appellant asserts that the Board did not address its argument that the government failed in its contractual duty to designate the project location, but as the government points out, the exact location of the project was set forth in the contract and confirmed by government representatives prior to the submission of proposals.

Appellant argues that the Board's findings concerning appellant's requests for clarification of the RFP and the discussions at the preproposal conference do not amount to substantial evidence supporting the Board's decision. The Board has reviewed appellant's assertions and notes there are numerous citations to the record evidence that support the findings that were made in the decision.

The Board previously considered appellant's arguments and finds nothing in appellant's motion that warrants change in our original decision. We have concluded on review of the decision that the decision is supported by substantial evidence, and our conclusions are correct. Accordingly, we affirm our original decision denying the appeal.

Dated: 2 November 2005

LISA ANDERSON TODD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

I concur

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. 54245, Appeal of Hunt Building Company, Ltd., rendered in conformance with the Board's Charter.

Dated:

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