

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
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Grumman Aerospace Corporation) ASBCA Nos. 46834, 48006, 51526
)
Under Contract No. F04606-86-C-0122)

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OPINION BY ADMINISTRATIVE JUDGE DELMAN
ON MOTION FOR RECONSIDERATION

The Government moves for reconsideration of our opinion dated 7 December 1999, which denied the Government's motion to strike the testimony of a contractor witness, Mr. Mitchell Engel, for purported violation of the Board's discovery orders. Appellant opposes the Government's motion. Familiarity with the opinion is presumed.

For the most part, the Government's motion reargues the same points previously rejected by the Board in its earlier opinion. We held at that time that appellant did not materially violate Board discovery orders so as to justify sanctions. We have not been persuaded that this holding was in error and we affirm it.

As a related matter, the Government asks us to strike certain portions of Mr. Engel's trial testimony and related exhibits on the grounds that they provide REA quantum evidence, in violation a Board order issued at trial on 12 April 1999 which

pursuant to stipulation precluded appellant from presenting REA quantum evidence (tr. 45/10).

The evidence in issue relates to the number of hours purportedly incurred by appellant to perform claimed out-of-scope STRs and FPRs. However, appellant has not sought to quantify or price these hours in its claim before the Board. Appellant's claim is predicated upon an Ernst & Young damage calculation which uses a modified total cost approach to compute damages. Hence, the Government's contention that these "REA hours [are] being used to prove Appellant's quantum" (motion at 5) in contravention of the Board's order is without merit.

Under the circumstances, we believe the subject evidence goes to appellant's entitlement to recover, rather than to the quantification of the entitlement. Keeping this evidence in the record is not inconsistent with the Board's 12 April 1999 Order.

The Board's opinion of 7 December 1999 is affirmed, and the Government's motion is denied.

Dated: 3 April 2000

JACK DELMAN
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

DAVID W. JAMES, JR.
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 Nos. 46834, 48006 and 51526, Appeals of Grumman Aerospace Corporation, rendered in conformance with the Board's Charter.

Dated:

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