

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
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American Service & Supply, Inc.) ASBCA Nos. 49309, 50606
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Under Contract No. F34650-94-C-0177)

APPEARANCE FOR THE APPELLANT: Garreth E. Shaw, Esq.
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APPEARANCES FOR THE GOVERNMENT: COL Anthony P. Dattilo, USAF
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OPINION BY ADMINISTRATIVE JUDGE SCHEPERS
ON MOTION FOR RECONSIDERATION

The Government filed a timely motion for reconsideration of this Board's 29 April 2003 decision reported at 03-1 BCA ¶ 32,253, which converted American's termination for default into a termination for convenience of the Government, on the following grounds: (1) the Board erred in not upholding the default on the ground that the signature of Pamela Escobar-Holak, owner of American, was a "forgery" on several Statement of Compliance forms with payrolls attached, which were submitted to the Government (mot. at 22); (2) the portion of the specifications pertinent to this dispute was performance rather than design, thus the Board erred in finding the specifications were defective due to the fact that the rotations of the engine and compressor were not compatible; (3) the Board erred in excluding the time period of 31 January to 31 May 1995 (actually 31 January to 16 May 1995) from the time necessary to complete the second engine when American signed a full release with only a thirty-two day extension despite the period American was delayed in working on the first engine; and (4) the Board erred in holding that the Government required "individual" testing of the skid and that these tests caused a five-month delay. In addition, the Government proposes various clarifications to the Board's findings. In essence, the Government is rearguing the facts. We are not persuaded that there is any error in the findings or that the requested clarifications are needed.

We assume familiarity with our prior decision, although certain portions of that decision are repeated as needed for clarity and context. The referenced findings are those in our initial decision.

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 this 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, 2003 ASBCA LEXIS 99 (Sept. 30, 2003) .

With regard to the first ground, the Government contends that Ms. Escobar-Holak did not personally sign her name on several Statement of Compliance forms. On 30 January 1995 Ms. Escobar-Holak wrote the Government: “As per your request the following employees of [American] have the authority to bind the company . . . with signatures on all documents pertaining to the above stated contract: Sharon Campbell Holder . . . William P. Holder, III” (R4, tab 81). Accordingly, the Government has not proved the premise of its argument. Further the Government has not indicated any inaccuracies, and we are aware of none, in these documents.

With regard to the second ground, the specifications set out the engine and compressor as brand name or equal and required “standard products” (findings 5, 6). The Takeover Agreement executed after the default termination allowed 110 days for the change to the oil pump assembly so that the rotation of the compressor was compatible with the engine (findings 71, 72). The Government’s concern at this time was that if the compressor’s oil pump was changed, the compressor would become a custom unit and not the standard manufactured unit as called for in the contract (findings 5, 6, 72). We conclude that the specifications were design specifications in relevant respect and were defective.

With regard to the third ground, we observed the release language in determining the time in which American should have completed the first engine, although we recognized the Government delayed American for the period from 31 January to 16 May 1995 rather than just the thirty-two days set out in the pertinent modification. However in deciding the time logically required for American to complete the second engine by comparison to the time taken for the first engine, we properly deleted all the time American was delayed and unable to work on the first engine, without concern as to whether American was given an extension by a modification for that time.

We have difficulty understanding the Government’s point regarding the fourth ground. It was undisputed by the Government witnesses that (1) ordering delivery of the compressor separate from the engine and separate from the skid was “a de facto change from what the specifications require” (finding 20), and (2) there was no contract requirement to test the skid individually, or for static or dynamic stress loading tests on the skid (finding 33). The Government also argues that American bears the responsibility for the unnecessary tests, because American failed to advise the Government that it had not modified the skid. We have no facts and we do not speculate on what the Government might

have done if American had made statements it did not make. Further, and of greater importance, there were no contract specifications for the size of the piping or of any other parts used in building the skid; in the Government's view, the contractor was to design and build the skid to be stable enough for the components it was to carry (finding 31).

We have considered the Government's other arguments in its Motion for Reconsideration but do not believe it necessary to discuss them. Having reconsidered our decision in light of that Motion, we do not find our decision in error and therefore affirm that decision.

Dated: 17 October 2003

JEAN SCHEPERS
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 Nos. 49309, 50606, Appeals of American Service and Supply, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services

Board of Contract Appeals