

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Armstead & Associates, Inc.) ASBCA No. 52610
)
Under Contract No. F26600-97-DV014)

APPEARANCE FOR THE APPELLANT: Robert C. Armstead
President

APPEARANCES FOR THE GOVERNMENT: COL Neil S. Whiteman, USAF
Chief Trial Attorney
Tedd J. Shimp, Esq.
Senior Trial Attorney

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

Appellant Armstead & Associates, Inc. (Armstead) has filed a timely motion for reconsideration of our dispositive decision in this appeal, dated 22 August 2007. *Armstead & Associates*, ASBCA No. 52610, 07-2 BCA ¶ 33,656. Respondent has submitted a responsive brief opposing the motion. Familiarity with our decision is presumed.

In that decision, the Board held that it lacked jurisdiction to review Armstead's claims relating to the contract's first and second option years. We based our ruling on the fact that "Armstead was cognizant of these additional sums at the time when it filed its claim with the CO," but that it, "for reasons not explained, did not include those sums in its claim, and the CO did not address them." We further held that "[all] of the prerequisite facts for filing a claim with respect to the first and second option years existed when Armstead filed its claim for the base year," but that it "did not amend its claim before the CO issued his final decision". 07-2 BCA at 166,663.

In its motion for reconsideration, Armstead disputes our jurisdictional holding, but it does not produce any persuasive evidence to support its sketchy contentions (app. br. at 2). Accordingly, we affirm our holding in this regard.

With respect to the merits, the Board ruled that, "in order to recover on a claim of negligently prepared estimates, a contractor must first satisfy a burden of production by showing a disparity between the estimates and the actual volume of work performed." Here, Armstead could not meet this burden because the actual work it performed was

directly comparable to the Air Force's estimates. On this basis, we denied Armistead's claim for the contract's base year. 07-2 BCA at 166,663.

In its motion, Armistead contends that the Board mistakenly characterized its claim and that it is entitled to be paid "for work it performed over the estimated amounts" (app. br. at 1). It is Armistead which is mistaken. In its opinion, the Board found that Armistead did not perform work above the estimated amounts. 07-2 BCA at 166,662-63. Accordingly, Armistead did not meet its threshold burden of production.

Armistead also argues that "[r]econsideration is also appropriate in this case because the Judge who presided over the hearing did not participate in the writing of the decision" (app. br. at 1). As we explained in our decision, the Judge who presided over the hearing had retired prior to the issuance of our decision. 07-2 BCA at 166,664.

Armistead briefly cites several "additional errors" in our decision. Chief among these is its contention that the Air Force employee who analyzed its claim, Ms. Burnham, did not examine all of its job orders (app. br. at 2). Armistead is mistaken. As we found, "Ms. Burnham examined every job order on the computer disk submitted by Armistead for the contract's base year (tr. 2/ 183-84)." 07-2 BCA at 166,662.

DECISION

The Board has reconsidered its decision and affirms it. Armistead's motion is, therefore, denied.

Dated: 15 January 2008

MICHAEL T. PAUL
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. 52610, Appeal of Armstead & Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

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