

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
The Swanson Group, Inc.) ASBCA No. 54863
)
Under Contract No. N68711-91-C-9509)

APPEARANCE FOR THE APPELLANT: Mr. Johnny Swanson, III
President

APPEARANCES FOR THE GOVERNMENT: Thomas N. Ledvina, Esq.
Navy Chief Trial Attorney
John S. McMunn, Esq.
Senior Trial Attorney
Naval Facilities Engineering
Command
Alameda, CA

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD ON GOVERNMENT'S
MOTION FOR RECONSIDERATION

The government moves for reconsideration of our decision denying its motion to dismiss, *The Swanson Group, Inc.* ASBCA No. 54863, 07-2 BCA ¶ 33,672 (Swanson VIII), arguing that the Board made four errors in its decision. In deciding a motion for reconsideration we determine whether the motion is based on newly discovered evidence, errors in our findings or legal theories we failed to consider in reaching our underlying decision. *L&C Europa Contracting Co., Inc.*, ASBCA No. 52617, 04-2 BCA ¶ 32,708.

First, respondent argues that we erred by ignoring the requirements of FAR 52.249-2, TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 1984), which requires the submission of a settlement proposal or a request for an extension to the contracting officer “no later than 1 year from the effective date of termination.” Respondent states that “it is a given that the Contractor ... failed to submit a settlement proposal or a written request for extension to the Contracting Officer within the required 1-year period.” While our decision makes clear that the contractor failed to submit a settlement proposal within the one-year period, our decision clearly found that the request for a time extension was timely and appropriately made. Pointing to our finding that the one-year period ended on 13 November as part of this error, respondent without citing any authority, says it expired on 12 November. This argument ignores the

Board conclusion that the request was made on 10 November when mailed and whether or not the one-year period ended on 12 or 13 November is simply not relevant.¹

For its next two arguments, the government alleges that the Board erred by finding that a letter addressed to Mr. McMunn (counsel) from an individual with no prior connection to the case was not binding upon the contracting officer as a request for extension – even though the letter made its way to the contracting officer, who denied the request for an extension. These arguments were made in the motion and were rejected in our decision.

The last error alleged is quoted below:

Fourth, the Board’s Decision purports to establish as a matter of law the principle under the FAR that a Contracting Officer has no discretion for any reason to deny a request by a Contractor for an extension of the time within which to submit a contract termination settlement proposal.

The import of the Board’s Decision in this appeal that a Contracting Officer lacks discretion to deny a requested extension is demonstrated by the facts in this appeal.

(Mot. at 2)

Respondent misreads the Board’s decision. We merely held that the request was timely, and consequently under FAR 52.249-2(i) (currently FAR 52.249-2(j)) appellant has the right to contest a determination by the contracting officer via an appeal to this Board. We made no conclusions on the import of the denial of that request. Clearly the contracting officer had the discretion to deny the request. However, the Termination for Convenience clause in the contract says that the determination may only be contested in an appeal to the Board if the contractor submitted a timely settlement proposal or a timely request for a time extension for doing so. Whether or not such extension is granted is beside the point. Under the clause, the mere timely request permits the appeal.

¹ In accordance with established practice with respect to federal statutes of limitation, the Board used the “anniversary method” to calculate the one-year period. *See United States v. Inn Foods, Inc.*, 383 F.3d 1319, 1323 (Fed. Cir. 2004). *See also Ryste & Ricas, Inc.*, ASBCA No. 54154, 06-1 BCA ¶ 33,124, *aff’d*, 477 F.3d 1337 (Fed. Cir. 2007).

Respondent has neither raised new evidence nor made any arguments not raised in the underlying motion to dismiss. Accordingly, the motion for reconsideration is denied.

Dated: 11 January 2008

RICHARD SHACKLEFORD
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. 54863, Appeal of The Swanson Group, Inc., rendered in conformance with the Board's Charter.

Dated:

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