

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
Smart Power Systems, Inc.) ASBCA No. 56743
Under Contract No. W15P7T-06-D-N210)

APPEARANCE FOR THE APPELLANT: Lalit H. Gadhia, Esq.
Baltimore, MD

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.
Army Chief Trial Attorney
LTC Steven P. Cullen, JA
Trial Attorney

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

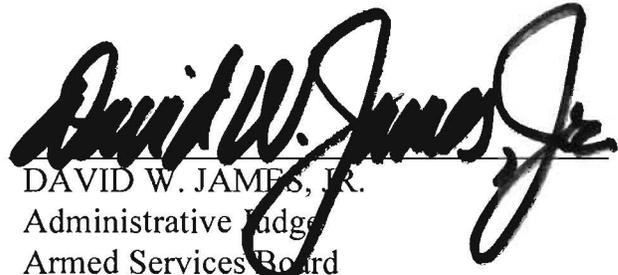
On 24 November 2010, the Board issued its decision in this appeal granting summary judgment to respondent on its default termination of the captioned contract. *Smart Power Systems, Inc.*, ASBCA No. 56743, 10-2 BCA ¶ 34,615. Appellant timely moved for reconsideration and the government opposed the motion. Appellant has not offered any newly discovered evidence nor has it identified any factual or legal errors in our decision. The legal errors asserted in appellant’s motion for reconsideration repeat the arguments in its opposition (opp’n) to respondent’s motion for summary judgment, which we have already addressed.

Appellant’s motion for reconsideration presents a new argument: “Appellant was not given the minimum opportunity to have a hearing where Appellant could present [its] case and show that they had not acted in bad faith in causing a delay of the [FATP]” (mot. at 1-2), and “Appellant has requested that the ASBCA grant a hearing where Appellant can defend its position but ASBCA has not provided Appellant with the opportunity to do so and has instead granted the Government’s motion for summary judgment” (*id.* at 4).

Appellant is correct that the effect of granting the motion for summary judgment was to eliminate a hearing on the merits of its defenses. But to avoid that result it was up to appellant to show a disputed, and hence triable, issue of material fact on the motion for summary judgment. It did not do so, as explained in our 24 November 2010 decision.

We deny appellant's motion for reconsideration.

Dated: 3 February 2011



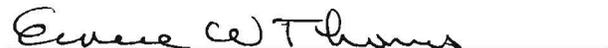
DAVID W. JAMES, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMLER
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. 56743, Appeal of Smart Power Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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