

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
American AquaSource, Inc.) ASBCA Nos. 56677, 57275
)
Under Contract No. W91GDW-08-D-4010)

APPEARANCE FOR THE APPELLANT: Susan Montee, Esq.
Jefferson City, MO

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
CPT Tudo N. Pham, JA
Erica S. Beardsley, Esq.
Trial Attorneys

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

On 14 February 2013, American AquaSource, Inc. (AAS), timely moved for reconsideration of our 8 January 2013 decision upholding the Army's termination for cause of a contract to provide bottled water and denying breach of contract claims in the amount of \$3,437,276. *American AquaSource, Inc.*, ASBCA Nos. 56677, 57275, 13-1 BCA ¶ 35,212.¹ Familiarity with that decision is presumed.

In order to prevail on a motion for reconsideration, the moving party must show that there is newly discovered evidence, mistakes in our findings of fact, or errors of law. *Computer Sciences Corp.*, ASBCA Nos. 56168, 56169, 09-2 BCA ¶ 34,261. A motion for reconsideration will not be granted absent a compelling reason. *Zulco International, Inc.*, ASBCA No. 55441, 08-1 BCA ¶ 33,799 at 167,319.

AAS argues that we erred in finding that its failure to purchase water from a CENTCOM-approved supplier was the proximate cause of the termination for default. According to AAS, it could not have purchased the required quantity of water and had it in place by 1 August 2008 without first resolving the land and housing disputes (app. mot. at 2).² We disagree.

¹ Judge Thomas who participated in this decision has since retired.

² Throughout the contract, AAS maintained that the government had promised it 11 acres of land for its water bottling plant and housing for its Iraqi construction workers. Neither of these disputes was resolved at the time of the termination.

The contract required AAS to deliver 1,080,000 bottles of water on 1 August 2008. Although the contract established a delivery date for the water, it did not set a date for completion of the water bottling plant. Thus, there was no requirement that the water bottling plant be completed by 1 August 2008. The contingency plan in AAS' proposal, which was incorporated into the contract at award, stated that AAS would "buy[] bottled water from a Centcom [sic] approved supplier [for the first quarter of the contract] in order to commission the [water bottling] plant in a timely fashion." The first quarter of the contract extended from 1 August through 1 November 2008. AAS has neither alleged nor proven that it was impossible to obtain bottled water from a CENTCOM-approved source by 1 August 2008. As a result, we concluded that AAS' failure to obtain bottled water by the specified delivery date was the proximate cause of the default. We affirm our original decision.

AAS also argues that we erred in concluding that there was no proof that the specifications were defective or that the Army failed to cooperate and/or disclose vital information to AAS. We have already considered and rejected these arguments.

AAS' motion for reconsideration is denied.

Dated: 9 July 2013


ELIZABETH A. TUNKS
Administrative Judge
Armed Services Board
of Contract Appeals

I concur


MARK N. STEMPLER
Administrative Judge
Acting 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. 56677, 57275, Appeals of American AquaSource, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals