

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
 )  
GSC Construction, Inc. ) ASBCA Nos. 59402, 59601  
 )  
Under Contract No. W9126G-11-D-0061 )

APPEARANCES FOR THE APPELLANT: Karl Dix, Jr., Esq.  
Douglas L. Tabeling, Esq.  
Lochlin B. Samples, Esq.  
Smith, Currie & Hancock LLP  
Atlanta, GA

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
Stephanie R. Darr, Esq.  
Keith J. Klein, Esq.  
Alexandria P. Tramel, Esq.  
Lauren M. Williams, Esq.  
Engineer Trial Attorneys  
U.S. Army Engineer District, Tulsa

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON APPELLANT'S  
MOTION FOR SUMMARY JUDGMENT

Appellant moves for summary judgment that it is entitled to time extensions because, it contends, the government constructively changed the contract referenced above by requiring that appellant construct "building pads" for the warehouses that appellant agreed to design and build pursuant to Task Order DS01 of the contract (app. mot. at 1). The motion is denied. Summary judgment shall be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Avant Assessment, LLC*, ASBCA No. 58867, 15-1 BCA ¶ 36,067 at 176,129 (citing FED. R. CIV. P. 56(a)).

At this stage, the Board is not persuaded that appellant has met that burden, for at least one reason. The government contends that the building pads constitute "specific site preparation required to accommodate the foundation design prepared or proposed by [appellant]," making appellant responsible for that work pursuant to section 6.3.1.1(e) of the statement of work (R4, tab 30 at 66; resp. at 2). Although appellant denies this (reply at 28), the Board does not find that the record yet demonstrates which party is correct. The Board expects that answering that question

will require further development of the record, presumably during a hearing on the merits. Appellant's motion for summary judgment is denied.

Dated: 7 June 2016



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TIMOTHY P. MCILMAIL

Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

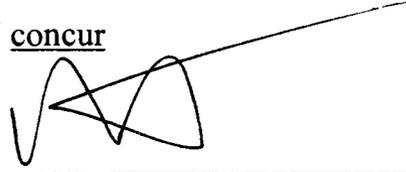


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MARK N. STEMLER

Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



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RICHARD SHACKLEFORD

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. 59402, 59601, Appeals of GSC Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

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JEFFREY D. GARDIN

Recorder, Armed Services  
Board of Contract Appeals