

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Kellogg Brown & Root Services, Inc. ) ASBCA No. 56358  
 )  
Under Contract No. DAAA09-02-D-0007 )

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APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
MAJ John C. Dohn, JA  
Robert T. Wu, Esq.  
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE FREEMAN ON THE  
GOVERNMENT'S MOTION FOR RECONSIDERATION

The government moves for reconsideration of our 2 April 2012 decision denying both parties' motions for summary judgment. *Kellogg Brown & Root Services, Inc.*, ASBCA No. 56358, 12-1 BCA ¶ 35,001. The government argues that we erred in holding that the captioned contract did not categorically prohibit use of private armed security companies to supplement force protection where necessary to accomplish the logistical support mission of the contract. The specific errors alleged are that (i) our conclusion "is not supported by any meaningful analysis of the contract language" and (ii) we ignored the government's extrinsic evidence purportedly showing that during performance of the contract KBRS agreed with the government's interpretation of the contract as categorically prohibiting use of private armed security companies without the express permission of the government. (Gov't mot. at 2, 4-5)

Our analysis of the contract text in Special Provisions H-13, H-16 and H-21 is set forth in the third through sixth paragraphs of our decision and we see no need to repeat that analysis here. 12-1 BCA ¶ 35,001 at 172,015. That analysis led us to conclude that the clear and unambiguous terms of the contract relied upon by the government contained no categorical prohibition against the use of private armed security companies for force protection where necessary to accomplish the logistical support mission of the contract. Having so concluded, any extrinsic evidence of post-award interpretations to the contrary could not be considered to vary the objectively manifested intent of the parties in the

clear and unambiguous written terms of the contract at award.<sup>1</sup> *Coast Federal Bank, FSB v. United States*, 323 F.3d 1035, 1038, 1040 (Fed. Cir. 2003).

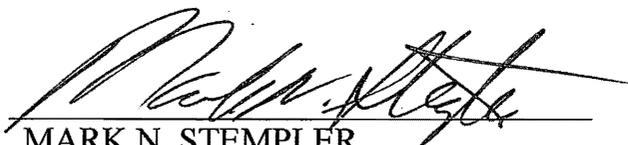
On reconsideration, we affirm our decision of 2 April 2012.

Dated: 22 June 2012



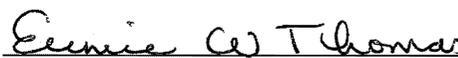
MONROE E. FREEMAN, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

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

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<sup>1</sup> As an example of its extrinsic evidence of the parties' alleged intent to bar the use of private armed security companies without the government's permission, the government cites a post-award request by a KBR contract manager to the government that "until appropriate security support is provided...you provide authorization for KBR to Issue or procure weapons and ammunition for our Security force" (gov't mot. at 4-5). This request was expressly made under the terms of Special Provision H-21 and the "Security force" to be armed consisted of "employees" who "would be screen[ed]" by KBR (R4, tab 14 at 2). This was a request for permission to arm KBR employees and not a request for permission to retain a professional private armed security company having its own employees, arms and ammunition.

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. 56358, Appeal of Kellogg Brown & Root Services, Inc., rendered in conformance with the Board's Charter.

Dated:

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