

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Hensel Phelps Construction Co.) ASBCA No. 49716
)
Under Contract No. DACA47-94-C-0022)

APPEARANCE FOR THE APPELLANT: Lester C. Cannain, Esq.
Albuquerque, NM

APPEARANCES FOR THE GOVERNMENT: Frank Carr, Esq.
Engineer Chief Trial Attorney
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Engineer Trial Attorney
U.S. Army Engineer District,
Albuquerque

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

Appellant has filed a timely Motion for Reconsideration of the Board's 3 May 2000 decision denying appellant's appeal. In addition to the motion, we have a response from the Government and a reply thereto from appellant.

We have fully considered the parties' submissions and deny the motion. While appellant takes exception to the Board's decision, appellant's motion is not based upon any newly discovered evidence or legal theories which the Board failed to consider initially. Appellant argues that because the facts in the record, and as basically found by the Board in its decision, support appellant's position as to the nature of the inconsistencies in the finish schedule and the drawing plans and sections, the Board should conclude the ambiguity was not patent but a latent one to be resolved against the drafter, the Government. However, the Board fully considered this argument and the others raised by appellant in our decision and concluded otherwise. We continue to do so.

We have reconsidered our original decision and affirm it.

Dated: 22 August 2000

PAUL WILLIAMS
Administrative Judge
Chairman
Armed Services Board
of Contract Appeals

I concur

I concur

MARK N. STEMLER
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

DAVID W. JAMES, JR.
Administrative Judge
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. 49716, Appeal of Hensel Phelps Construction Co., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals