ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --	)	
	)	
ITT Avionics Division	)	ASBCA Nos. 50403, 50961, 52468
	)	
Under Contract No. N00019-89-C-0160	)	

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OPINION BY ADMINISTRATIVE JUDGE HARTY
ON MOTION FOR RECONSIDERATION

The government filed a timely motion[*] for reconsideration of the Board's 7 April 2003 decision (*ITT Avionics Division*, ASBCA Nos. 50403, 50961, 52468, 03-1 BCA ¶ 32,238) on entitlement. Familiarity with our prior decision is assumed.

We assess a motion for reconsideration against the standard of whether the motion is based upon any newly discovered evidence, errors in our fact findings or legal theories which the Board failed to consider in formulating its original decision. *E.g., Danac, Inc.*, ASBCA No. 33394, 98-1 BCA ¶ 29,454 at 146,219; *Sauer Inc.*, ASBCA No. 39372, 96-2 BCA ¶ 28,620 at 142,897. It is not the purpose of reconsideration to afford a party the opportunity to reargue contentions that have been fully considered and rejected by the Board. *E.g., McDonnell Douglas Electronics Systems Company*, ASBCA No. 45455, 99-1 BCA ¶ 30,132; *Gloe Construction, Inc.*, ASBCA Nos. 26434, 26814, 84-3 BCA ¶ 17,516.

[*] The government styled its initial motion as one for "Reconsideration *En Banc*," without further elaboration. It later indicated that it sought review by the full Board, although it acknowledged that our procedures do not provide for such a review (gov't reply at 2). Full Board review is not available. Moreover, the government has not sought review by the Senior Deciding Group.

We have reviewed the government's motion and must conclude that it does not present new evidence, errors in our fact findings or legal theories that were not previously considered. Instead, the motion invites us to re-weigh the evidence, in reliance on a selective reading of the witnesses' testimony, and restates or recasts arguments previously made and rejected.

We do note, however, that under our reading of the contract, there is no conflict between clause J-8 and the Termination for Convenience clause and we reject the idea that we erred by not finding clause J-8 in conflict with the Termination for Convenience clause of the contract (gov't mot. at 1-2). We must give a reasonable meaning to questioned language within the context of the contract when read as a whole, giving effect to all of its provisions. An interpretation which leaves a portion of the agreement "useless, inexplicable, inoperative, void, insignificant, meaningless or superfluous" or in conflict with another portion of the agreement should be avoided unless no other reasonable interpretation is possible. *Hol-Gar Manufacturing Corp. v. United States*, 351 F.2d 972, 979 (Ct. Cl. 1965). *See also Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985). When the contract is read as a whole, we believe that there is no conflict with the Termination for Convenience clause and nothing ambiguous about the parties' agreement in clause J-8 that: "[t]he Government will have no right to, or property interest in any residual material procured by the Contractor as part of the repair material lay-in." As we noted, Federal Acquisition Regulation (FAR) Part 49--TERMINATION OF CONTRACTS, which mandates the inclusion of a Termination for Convenience clause, contemplates the possibility of separate treatment of certain material by recognizing that "termination inventory" would not include "material[s] . . . that are subject to a separate contract or to a special contract requirement governing their use or disposition." *See* FAR 49.001, adopting the definition of "termination inventory" found in FAR 45.601. It was in the context of this guidance that we found clause J-8 to be permissible.

Moreover, while the parties may have negotiated the contract with the expectation that it would be completed and not terminated, the evidence was clear that there was no consideration of whether or not clause J-8 would apply in the event of a termination. In any event, where, as here, the provisions of a contract are clear and unambiguous, the parole evidence rule precludes a tribunal from resorting to extrinsic evidence to vary its terms, even if there were some testimony at odds with the clear language of the contract. *See Rumsfeld v. Freedom NY, Inc.*, 329 F.3d 1320, 1327 (Fed. Cir. 2003); *HRE, Inc. v. United States*, 142 F.3d 1274, 1276 (Fed. Cir. 1998); *Sylvania Electric Products, Inc. v. United States*, 458 F.2d 994, 1005 (Ct. Cl. 1972).

Finally, the government's continued reliance on the second contracting officer's final decision is misplaced. As we previously explained, our review is *de novo*. In any event, the rationale of the contracting officer's decision would not be compelling since it was based on the assumption that the government owned the RAP inventory. On remand we

expect ITT to return to the approach reflected in its first proposal and we expect the contracting officer to evaluate the continued viability of that proposal in discharging his responsibility under FAR 49.202 for either negotiating or determining a fair profit.

DECISION

The government's motion for reconsideration is denied.

Dated: 30 September 2003

MARTIN J. HARTY
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

MARK N. STEMPLER
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 Nos. 50403, 50961, 52468, Appeals of ITT Avionics Division, rendered in conformance with the Board's Charter.

Dated:

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