

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Environmental Systems, Inc.) ASBCA No. 53283
)
Under Contract No. DAAB07-98-C-Y007)

APPEARANCE FOR THE APPELLANT: Ross W. Dembling, Esq.
Holland & Knight LLP
McLean, VA

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
Craig S. Clarke, Esq.
Supervisory Trial Attorney
CPT Jennifer S. Zucker, JA
Trial Attorney

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

The Government has filed a timely motion for reconsideration of the Board's decision dated 23 January 2003. In that decision, which itself was in response to a motion for reconsideration, we accepted some of the Government's proposed amendments to its answer and rejected others. Familiarity with that decision is presumed. The Government asks us to reconsider the latter part of the ruling.

The Government's motion does not present new evidence, nor does it assert a previously unconsidered legal theory. *Danac, Inc.*, ASBCA No. 33394, 98-1 BCA ¶ 29,454 at 146,219. The matters raised by the Government were raised in the briefing on the motion to amend or in the briefing on the original motion for reconsideration.

Nevertheless, we shall discuss the parties' various contentions. First, it is clear that both sides misapprehend our earlier decision. The allegations in paragraphs 86 through 91 of the proposed amendment were struck because they tracked the language of the False Claims Act, 31 U.S.C. § 3729. We did not, as the Government asserts, rule that we lack jurisdiction over common law fraud asserted as an affirmative defense. And, contrary to appellant's suggestion, we did not accept the proposition that the Board could not hear an assertion that fraud occurred during the performance of a valid contract. Our rulings are limited to the factual situations presented, and our earlier decision should be understood in that light.

CONCLUSION

We have reconsidered our decision and affirm it.

Dated: 4 April 2003

MICHAEL T. PAUL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

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 No. 53283, Appeal of Environmental Systems, Inc. rendered in conformance with the Board's Charter.

Dated:

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