

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
NMS Management, Inc.) ASBCA No. 53444
)
Under Contract No. N63387-98-D-8041)

APPEARANCES FOR THE APPELLANT: Peter J. Ippolito, Esq.
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San Diego, CA

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
Anthony K. Hicks, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PEACOCK
ON MOTION FOR RECONSIDERATION

The government filed a timely Motion for Reconsideration of one portion of the Board's 6 August 2003 decision, *NMS Management, Inc.*, ASBCA No. 53444, 03-2 BCA ¶ 32,340. The appeal involves 13 contractor claims for constructive changes. The government challenges our decision on the "COM Cleaning" claim. *Id.* at 159,981-83. Familiarity with our prior decision is presumed.

The general standards we apply in deciding a motion for reconsideration, are whether the motion is based upon newly-discovered evidence or errors of fact or law that the Board failed to consider in reaching its underlying decision. *E.g. Danac, Inc.*, ASBCA No. 33394, 98-1 BCA ¶ 29454 at 146,219; *Sauer Inc.*, ASBCA No. 39372, 96-2 BCA ¶ 28,620 at 142,897. The purpose of the motion is not to afford a party with the opportunity to reargue contentions that have been fully considered and rejected. *E.g. McDonnell Douglas Electronics Systems Co.*, ASBCA No. 45455, 99-1 BCA ¶ 30,132 at 149,057.

The present government motion does not offer newly-discovered evidence or present factual or legal issues that were not fully considered and rejected by the Board in reaching its prior decision. With respect to the "COM Cleaning," we considered: the extensive, relevant backgrounds of the individuals preparing appellant's offer on that portion of the contract, the credibility of the witnesses generally, appellant's reasonable reliance on cleaning standards imposed in the family housing Handbook distributed to the residents, the presence of extensive fines imposed on departing tenants for failure to meet those standards, the testimony of the government's Housing Manager that appellant merely would

have had to “spruce up” the units had those tenants complied with their responsibilities, and the voluminous record of inspection reports preceding turnover of the units to appellant. Based on the entire record, our overall judgment was that “25% more cleaning was required than should have been anticipated by appellant.” *Id.* at 159,983. In reaching that conclusion, we considered and rejected all of the government’s present contentions. The government motion adduces no factual or legal grounds to establish our decision was in error.

The government’s motion for reconsideration is denied.

Dated: 5 November 2003

ROBERT T. PEACOCK
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

CARROLL C. DICUS, JR.
Administrative Judge
Acting 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. 53444, Appeal of NMS Management, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ

Recorder, Armed Services
Board of Contract Appeals