

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
KiSKA Construction Corp.-USA and)
Kajima Engineering and Construction, Inc.,)
a Joint Venture) ASBCA Nos. 54613, 54614
)
Under Contract No. 1E0023)

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Washington Metropolitan Area
Transit Authority

OPINION BY ADMINISTRATIVE JUDGE DELMAN
ON MOTION FOR RECONSIDERATION

The Washington Metropolitan Area Transit Authority (the Authority) seeks reconsideration of our decision in *KiSKA Construction Corp.-USA and Kajima Engineering and Construction, Inc., a Joint Venture*, ASBCA Nos. 54613, 54614, 06-1 BCA ¶ 33,244, in which we denied the Authority’s motion to dismiss and/or for summary judgment. Familiarity with our decision is presumed.

In its reconsideration motion, the Authority contends that the Board (1) overlooked certain of its legal theories, and (2) appears to have made erroneous and contradictory findings of fact (mot. at 2). We do not agree with the Authority. The Board did consider the Authority’s contentions,¹ but they were found to be unpersuasive given the state of the record and the circumstances of the case. The case law cited by the

¹ “We have duly considered WMATA’s remaining contentions . . .” (06-1 BCA at 164,772).

Authority (mot. at 3-5) is distinguishable; it does not address the unique disputes framework for WMATA contracting, as discussed by the Board in its decision, and which the Authority fails to acknowledge in its motion papers.

As for the Authority's second argument, we are not persuaded that the Board issued erroneous or contradictory findings regarding appellant's Changes claims. Rather, we identified the conflicting evidence of the parties (SOF ¶¶ 6, 7, 15-18) to show that, drawing all inferences in favor of the nonmoving party, summary judgment was not appropriate. Where the record shows that there are material facts in issue, or even any doubt as to whether the nonmoving party raised such facts, summary judgment is not appropriate. *See Copeland v. Cohen*, 905 A.2d 144 (D.C. 2006).

We have reconsidered our decision in view of the Authority's motion for reconsideration. Our decision is affirmed.

Dated: 6 November 2006

JACK DELMAN
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 Nos. 54613, 54614, Appeals of KiSKA Construction Corp.-USA and Kajima Engineering and Construction, Inc., a Joint Venture, rendered in conformance with the Board's Charter.

Dated:

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