

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
DLT Solutions, Inc.) ASBCA Nos. 54812, 55362
)
Under Contract No. DAAB15-99-A-1002)

APPEARANCE FOR THE APPELLANT: David C. Aisenberg, Esq.
Looney, Cohen, Reagan &
Aisenberg, LLP
Boston, MA

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.
Army Chief Trial Attorney
CPT Robert T. Wu, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE JAMES ON
RESPONDENT'S MOTION FOR RECONSIDERATION

On 18 February 2009 respondent timely moved for reconsideration of the Board's 26 January 2009 decision in the captioned appeals, *DLT Solutions, Inc.*, ASBCA Nos. 54812, 55362, 09-1 BCA ¶ 34,067. Movant does not dispute any of the Board's findings of fact, but contends that our decision extended the law applicable to breach of a non-substitution clause well beyond what movant construes as the two elements of proof established by *Municipal Leasing Corp. v. United States*, 7 Cl. Ct. 43 (1984) and *Northrop Grumman Computing Systems, Inc.*, GSBCA No. 16367, 06-2 BCA ¶ 33,324, to wit, the government replaced the contractor's equipment or software with functionally equivalent software and the work performed by the contractor's software was performed by the substituted government software. (Gov't mot. at 1, 7). Movant admits that its motion repeats the argument in its post-hearing brief. There it argued that, since OCHR never used, implemented or tested the DO 29 software leased from DLT, such software could not have been replaced, distinguishing *Municipal* where the Air Force leased, installed and used the computer terminals in issue. (Gov't br. at 102-03, 109; gov't reply br. at 81-82)

Appellant's 12 March 2009 opposition argues that the motion does not meet the reconsideration standards of newly discovered evidence, errors in fact findings or legal theories not considered by the Board (app. opp'n at 1, 5-6). Respondent's 31 March 2009 letter stated that appellant's opposition did not warrant a reply.

We conclude that movant's grounds were fully briefed in 2008 and considered in the Board's January 2009 decision. We reaffirm our decision and deny the motion for reconsideration.

Dated: 4 May 2009

DAVID W. JAMES, JR.
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. 54812 and 55362, Appeals of DLT Solutions, Inc., rendered in conformance with the Board's Charter.

Dated:

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