ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --	)	
	)	
Computer Sciences Corporation	)	ASBCA Nos. 56168, 56169
	)	
Under Contract No. DAAB07-00-D-E252	)	

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OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY
ON GOVERNMENT'S MOTION FOR RECONSIDERATION

The government has moved for reconsideration of our decision denying its motions for summary judgment on Counts 7 and 8 of the First Amended Complaint, ASBCA Nos. 56168 and 56169. *See Computer Sciences Corporation*, ASBCA Nos. 56168, 56169, 2009 ASBCA LEXIS 59, July 23, 2009. Appellant Computer Sciences Corporation (CSC) opposed the motion.

In deciding a motion for reconsideration, we consider whether the motion is based upon newly discovered evidence, mistakes in our findings of fact or errors of law. *Zulco International, Inc.*, ASBCA No. 55441, 08-1 BCA ¶ 33,799 at 167,319. Reconsideration is not intended to provide a party with the opportunity to reargue its position. *McDonnell Douglas Electronics Systems Co.*, ASBCA No. 45455, 99-1 BCA ¶ 30,132 at 149,056.

The Army does not advance newly discovered evidence or take issue with our Statement of Facts for Purposes of the Motions. Rather, the Army again asserts that CSC's right to perform data processing and receive revenues and bonuses was conditioned upon the Army's decision to "go-live" with Deployments Two and Three and that because the conditions did not occur, the Board was required to conclude that CSC did not have a right to data processing revenues and bonuses as a matter of law. It faults the Board for not considering, or at least not discussing, the legal implications of our

finding that Deployments Two and Three did not occur according to the contractual schedule and did not occur prior to 31 March 2005. Finally, the Army suggests that the Board apparently assumed CSC had a vested right to data processing revenues and bonuses and asserts that this assumption cannot be reconciled with the finding that Deployments Two and Three did not occur.

The Army further contends that, if the Board's fundamental problem with its interpretation of Modification No. P00007 was a lack of factual support, the Board went too far in concluding the Army's interpretation was unreasonable. It concludes with the comment that its fundamental argument was obscured and reasserts its contention that CSC never had a right to commence Deployments Two and Three and therefore never had the right to receive the associated revenues and bonuses.

CSC responds that the Army's motion for reconsideration should be denied because it only restates a legal theory that was fully presented and considered by the Board. CSC points out that the Army acknowledges the Board correctly characterized the condition precedent theory it again raises in its motion and counters that the precedent cited by the Army, *General Injectables & Vaccines, Inc.*, ASBCA No. 54930, 06-2 BCA ¶ 33,401, *aff'd*, 519 F.3d 1360, *supplemented on rehearing*, 527 F.3d 1375 (Fed. Cir. 2008), actually supports CSC's position that the Army cannot rely upon non-performance of a condition as a defense if the Army was responsible for its non-performance. In CSC's view, the Army's argument is simply a disagreement with the weight the Board accorded to the fact that Deployments Two and Three did not take place, which is not a proper ground for reconsideration under *Grumman Aerospace Corp.*, ASBCA No. 46834 *et al.*, 03-2 BCA ¶ 32,289 at 159,770.

The Army's motion for reconsideration is, as CSC asserts, based upon an argument it raised in its motions for summary judgment. The Army's present motion focuses upon our finding that Deployments Two and Three did not occur according to the contract schedule; however, its legal argument that CSC had only a conditional right to data processing revenues and bonuses before 31 March 2005 has not changed. Indeed, the Army acknowledges our correct characterization of its argument. Contrary to the Army's belief, we did not find, even implicitly, that CSC had any vested rights to data processing revenues and bonuses. Instead, we considered CSC's allegations that the Army was responsible for contractual breaches and constructive changes that caused the delay in the deployment schedule. Thus, on the record before us, we declined to conclude that CSC had no right as a matter of law to data processing revenues and bonuses before 31 March 2005.

The Army also expresses concern that our conclusion that its interpretation of Modification No. P00007 was unreasonable may somehow preclude it from taking and using discovery pertaining to Counts 7 and 8. It asks us to amend our decision by deleting the sentence "We do not consider the interpretation advanced here by the Army

to be reasonable" and to base our denial of its motions upon the need for both parties to further develop the record. CSC responds that there is nothing in our decision which precludes discovery by the Army on Counts 7 and 8 and that it will continue to provide discovery on those claims.

As is reflected by the use of the word "here" in the sentence the Army asks us to delete, our decision was based upon the arguments it advanced in its motions for summary judgment. We find no compelling reason to retreat from our conclusion that the interpretation advanced by the Army in these motions was unreasonable. Moreover, as we also concluded, there was no factual predicate to the Army's assertion from which we could evaluate the context in which Modification No. P00007 had been executed. We understand from CSC's response to the motion for reconsideration that it is providing discovery on Counts 7 and 8 to the Army and will continue to do so. The Army has cited no legal authority which would preclude it from undertaking discovery and advancing its interpretation in the future with an adequate factual predicate.

For the reasons stated, the Army's motion for reconsideration and its request to amend our decision are denied.

Dated: 24 September 2009

CAROL N. PARK-CONROY
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. 56168, 56169, Appeals of Computer Sciences Corporation, rendered in conformance with the Board's Charter.

Dated:

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