

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Kolin Construction, Tourism, Industry) ASBCA Nos. 56941, 57066
and Trading Co., Inc.)
)
Under Contract No. FA5685-06-C-0029)

APPEARANCES FOR THE APPELLANT: Mark E. Hanson, Esq.
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APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq.
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Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON RESPONDENT'S
MOTION FOR RECONSIDERATION OR CLARIFICATION

The Department of the Air Force (respondent) has filed a "Motion for Reconsideration or Clarification" of the Board's decision dated 20 January 2011, which denied respondent's motions for judgment on the pleadings or alternatively for summary judgment in these appeals. *Kolin Construction, Tourism, Industry and Trading Co., Inc.*, ASBCA Nos. 56941, 57066, 2011 WL 310606. Appellant filed its response to the motion on 9 March 2011.

According to respondent's motion, respondent seeks to correct certain statements of fact in the Board's decision (mot. at 1). None of the proposed corrections are material to, or affect the outcome of the Board's decision. We address these contentions below.

Respondent first contends that the Board's decision erred in citing the award date of the contract. The Board stated in the "Statement of Facts" (SOF) ¶ 2 that the award date was 29 September 2006, relying upon the government Standard Form 1442, "SOLICITATION, OFFER, AND AWARD," Block 31C, which states "AWARD DATE 29-Sep-2006" (R4, tab 15). Respondent contends that the award date was "2 October 2006" and in support of that date cites a "Notice to Successful Offeror" from the contracting officer to appellant dated 2 October 2006 (R4, tab 16). We do not believe it was error for the Board to rely upon the award date plainly stated on the government's SF 1442.

Respondent next contends that in SOF ¶ 10 the Board did not recognize appellant's convention of dating letters "day, month, year" rather than "month, day, year." Specifically, respondent contends that appellant's letter dated "05.07.2007" which the Board cited as "7 May 2007," was actually dated "5 July 2007" (R4, tab 22). Respondent is correct. The Board's decision, SOF ¶¶ 10, 16, shall be corrected to reflect that appellant's letter to the government was dated "5 July 2007."

Respondent next contends that while "the Board indicates that the date Kolin initially submitted the material lists to the Air Force is significant in relation to a [equitable adjustment] clause that is part of contract section H-1...." (mot. at 2), the record shows that the Air Force issued the notice to proceed and/or authorized the construction on the project in sufficient time so as to render inapplicable any equitable adjustment (mot. at 3). However, the Board's decision did not find or conclude that appellant was entitled to an equitable adjustment under section H-1. The Board cited section H-1 for the limited purpose of showing that the contract itself does not generally insulate the government from liability for Turkish approval delays. We did not base our denial of the government's motion for judgment on the pleadings on section H-1; rather, as stated, we relied on the allegations in appellant's complaint (slip op. at 13). Respondent has not shown any error in the Board's statement of facts or in its decision in this respect.

Finally, respondent correctly notes that the Board's decision, SOF ¶ 18, cited a government memorandum to contractors as dated 4 September 2007, but this memorandum was actually dated 24 September 2007 (R4, tab 28). SOF ¶ 18 shall be corrected to reflect that this government memorandum to contractors is dated 24 September 2007.

CONCLUSION

Except for the date changes referenced herein, respondent's Motion for Reconsideration or Clarification of the Board's decision is denied.

Dated: 23 March 2011



JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

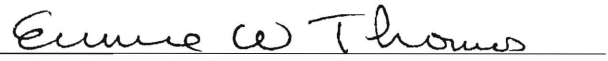
(Signatures continued)

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. 56941, 57066, Appeals of Kolin Construction, Tourism, Industry and Trading Co., Inc., rendered in conformance with the Board's Charter.

Dated:

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