

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
WestWind Technologies, Inc. ) ASBCA No. 57436  
 )  
Under Contract Nos. DAAA09-99-D-0014 )  
W52P1J-05-D-0010 )

APPEARANCES FOR THE APPELLANT: Michael L. Fees, Esq.  
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APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
CPT Matthew E. Dyson, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PEACOCK  
ON APPELLANT'S MOTION FOR RECONSIDERATION

WestWind Technologies, Inc. (WestWind or appellant) moves for reconsideration of our decision of 21 July 2011 granting the government's motion for summary judgment and denying the appeal. *WestWind Technologies, Inc.*, ASBCA No. 57436, 11-2 BCA ¶ 34,805.

To prevail on reconsideration, the moving party must generally establish that the underlying decision contained mistakes in our findings of fact or errors of law or that newly discovered evidence warrants reconsideration. *E.g., Zulco International, Inc.*, ASBCA No. 55441, 08-1 BCA ¶ 33,799 at 167,319; *L&C Europa Contracting Co.*, ASBCA No. 52617, 04-2 BCA ¶ 32,708 at 161,816; *Danac, Inc.*, ASBCA No. 33394, 98-1 BCA ¶ 29,454 at 146,219. WestWind has failed to establish the presence of any of these factors or any other compelling reason justifying reconsideration.

The underlying opinion concerned the interpretation of FAR 52.216-8, FIXED FEE (MAR 1997). We determined that the clause's withholding limitation applied to the individual orders as a matter of textual analysis, considering the unique language and interrelation of the pertinent provisions and pricing structures in the contract and

individual orders in dispute as well as the factual circumstances surrounding award and performance of the contract. In reaching that decision we considered all of the arguments now resurrected by appellant in its motion for reconsideration. In particular, appellant maintains that our decision is contrary to the result in *Semcor, Inc.*, ASBCA No. 39144 *et al.*, 91-2 BCA ¶ 23,783 (single time and materials pricing structure and rates incorporated into basic contracts defining all factors relevant to withholding). Appellant relied substantially on that decision in briefing submitted prior to issuance of our decision and it was fully considered by the Board. Suffice it to say, the Board determined that *Semcor* was inapposite given the differing clauses, interrelations between the contract and orders, as well as the nature and factual context of the issues involved in that case. In any event, motions for reconsideration are not intended to afford the movant an opportunity to reargue issues previously raised and rejected. *E.g.*, *COSTAR III, LLC*, ASBCA No. 55297 *et al.*, 10-2 BCA ¶ 34,548 at 170,385 (and cases cited).

Appellant has failed to present any basis for reconsidering our initial opinion. The motion is accordingly denied.

Dated: 19 October 2011



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ROBERT T. PEACOCK  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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MARK N. STEMPLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



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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 No. 57436, Appeal of WestWind Technologies, Inc., rendered in conformance with the Board's Charter.

Dated:

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