

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -)
)
Raytheon Company and Raytheon Missile) ASBCA Nos. 59435, 59436, 59437
Systems) 59438, 60056, 60057
) 60058, 60059, 60060
) 60061
)
Under Contract Nos. W15P7T-07-C-P207)
W31P4Q-07-C-0159)

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OPINION BY ADMINISTRATIVE JUDGE SCOTT
ON GOVERNMENT’S MOTION FOR RECONSIDERATION

The Defense Contract Management Agency (DCMA) moves the Board to reconsider its February 1, 2021 post-hearing decision in *Raytheon Company and Raytheon Missile Systems*, ASBCA Nos. 59435, 59436, 59437, 59438, 60056, 60057, 60058, 60059, 60060, and 60061, and asks the Board to refer its motion to the Board’s Senior Deciding Group. Appellants Raytheon Company and Raytheon Missile Systems (Raytheon) oppose the motion and the request.

DISCUSSION

Senior Deciding Group Request

Under the Board’s Rules, the Chairman may refer an appeal to the Senior Deciding Group if the appeal is of unusual difficulty, of significant precedential importance, or if the appeal has occasioned serious dispute within the normal division decision process. ASBCA Rules, Preface, Part II (c), 48 C.F.R. Chapter 2, App’x A, Part 2, Preface, Part II(c). The Chairman has determined that the decision in question

does not meet any of these criteria and he declines to refer DCMA's motion for reconsideration to the Senior Deciding Group.

Motion for Reconsideration

The Board applies the following standards in deciding a motion for reconsideration:

[W]e look to whether the movant has presented newly discovered evidence, mistakes in findings of fact, or errors of law. *Kellogg Brown & Root Services, Inc.*, ASBCA Nos. 57530, 58161, 16-1 BCA ¶ 36,554 at 178,039. A reconsideration motion is not an opportunity to reargue issues previously raised and decided, or to advance arguments that should have been presented in an earlier proceeding. *Precision Standard, Inc.*, ASBCA No. 59116, 15-1 BCA ¶ 36,155 at 176,445; *Avant Assessment, LLC*, ASBCA No. 58867, 15-1 BCA ¶ 36,137 at 176,384. A party moving for reconsideration "must show a compelling reason" why the Board should alter its decision. *Precision Standard*, 15-1 BCA ¶ 36,155 at 176,445.

Supreme Foodservice, GmbH, ASBCA No. 57884 *et al.*, 17-1 BCA ¶ 36,740 at 179,092.

A motion for reconsideration is not for bolstering contentions that the Board has already rejected or for expressing disagreements with the trier of fact over the weight to be accorded evidence and the inferences to be drawn from the evidence. *Potomac Electric Corp.*, ASBCA No. 61371, 20-1 BCA ¶ 37,663 at 182,862. Our appellate court advises that "long-established and salutary precepts" governing motions for reconsideration include the principles that:

[W]here litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again Motions for reconsideration do not afford litigants the opportunity to take "a second bite at the apple" or to advance arguments that properly should have been presented in an earlier proceeding.

Dixon v. Shinseki, 741 F.3d 1367, 1378 (Fed. Cir. 2014) (citations omitted).

We have reviewed DCMA's extensive motion, Raytheon's opposition, and DCMA's reply. Contrary to DCMA's contention, we have not ignored its proffered

evidence or its arguments. As we stated in our decision at issue, we have considered all of the parties' arguments, whether or not we have addressed them.

It is fully apparent that DCMA does not like, and disagrees with, much of the Board's decision. It is also fully apparent that, after a two-week evidentiary hearing and extensive briefing, DCMA is attempting to retry the appeals. With a few exceptions, DCMA repeats or elaborates upon proposed facts and arguments it raised in its post-hearing briefing. The exceptions, including quantum calculations on the issue of unallowable invention disclosure costs, are matters that could have been raised during the hearing and in post-hearing briefing.

DCMA has not offered any newly-discovered evidence or persuaded the Board that we made any mistakes in our fact findings or any errors of law.

DECISION

DCMA's Request for Referral to the Senior Deciding Group and its Motion for Reconsideration are denied.

Dated: May 11, 2021



CHERYL L. SCOTT
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur



RICHARD SHACKLEFORD
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals



DAVID D'ALESSANDRIS
Administrative Judge
Acting 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. 59435, 59436, 59437, 59438, 60056, 60057, 60058, 60059, 60060, 60061, Appeals of Raytheon Company and Raytheon Missile Systems, rendered in conformance with the Board's Charter.

Dated: May 12, 2021



PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals