ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)	
Exceed Resources, Inc.)	ASBCA No. 61652
Under Contract No. NNJ15RA22B)	
APPEARANCE FOR THE APPELLANT:		Mr. Celsius Rebello Director Government Services

APPEARANCES FOR THE GOVERNMENT: Scott W. Barber, Esq.

NASA Chief Trial Attorney

Warnecke Miller, Esq. Vincent A. Salgado, Esq.

Trial Attorneys NASA Headquarters Washington, DC

OPINION BY ADMINISTRATIVE JUDGE O'CONNELL ON APPELLANT'S SECOND MOTION FOR RECONSIDERATION

On February 18, 2021, appellant sent an email to the Board addressed to the "Chairman and Vice Chairman ASBCA." In this email, appellant states:

The Board determined as a fact in its summary judgment (or partial summary judgment as the case might be) that Exceed started the BASE IDIQ contract for which it was terminated. This is impossible because it could not start a contract that was terminated previously. I previously notified the NASA legal team to correct this statement of fact with the Board and advised them that not doing so is counter to the rules of candor to the court. It is manifest injustice that the Board assert a fact in summary judgment that has no basis and no evidence and which is not true.

(App. email dtd. February 18, 2021 at 9:14 a.m.) The Board will treat this email as a second motion for reconsideration of its opinion granting NASA partial summary judgment. *See Exceed Res., Inc.*, 20-1 BCA ¶ 37,634 (June 11, 2020) (*recon. denied* 20-1

¹ This email has been directed to the attention of the Board's Chairman for consideration. The Chairman has authorized the panel to state that the Board will take no further action other than that discussed in this opinion.

BCA ¶ 37,725 (Nov. 2, 2020)). The Board also observes that appellant made allegations similar to those quoted above in several other recent emails to the Board, including those on February 9 (12:47 p.m.), February 9 (4:31 p.m.), February 10 (12:55 p.m.), February 10 (2:50 p.m.), and February 17 (4:45 p.m.) (all emails in 2021).

Board Rule 20 provides that a motion for reconsideration "must be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion." There is no provision in the Board's Rules for a motion for reconsideration beyond this time or for a second motion for reconsideration and, absent extraordinary circumstances that are not present here, we would not consider one. *See Quality Trust, Inc.*, ASBCA No. 59983, 16-1 ¶ 36,529 at 177,948 (citing *Clyde P. Thomas*, ASBCA No. 28296, 88-3 BCA ¶ 21,179 at 106,881).

Appellant's second motion for reconsideration is denied as untimely because it was filed more than 30 days after appellant received the opinion on June 24, 2020. Simultaneous with this decision, the Board is granting appellant's request to withdraw the claims or issues that remained pending after the Board granted the government partial summary judgment in the decision referenced above. Appellant is directed to 41 U.S.C. § 7107(a)(1)(A) concerning further appellate review.

Dated: February 22, 2021

MICHAEL N. O'CONNELL

Michael M. O'Carll

Administrative Judge Armed Services Board of Contract Appeals

(Signatures continued)

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² The Board identifies the exact time of the emails so that they are not confused with several other emails appellant sent the Board during this time period.

³ During the initial months of the current pandemic, service of some Board opinions was delayed but the record reflects that the Board furnished its June 11, 2020, opinion to the parties by email on June 24, 2020. Appellant's first motion for reconsideration, which it filed on July 23, 2020, was, therefore, timely.

I concur

RICHARD SHACKLEFORD

Administrative Judge Acting Chairman Armed Services Board of Contract Appeals I concur

J. REID PROUTY

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. 61652, Appeal of Exceed Resources, Inc., rendered in conformance with the Board's Charter.

Dated: February 23, 2021

PAULLA K. GATES-LEWIS

Recorder, Armed Services

Board of Contract Appeals