

COMMONWEALTH OF PENNSYLVANIA

DOME CORPORATION OF NORTH  
AMERICA

BEFORE THE BOARD OF CLAIMS

VS.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION

DOCKET NO. 3293

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OPINION

The Plaintiff, Dome Corporation of North America (hereinafter "Dome") filed a Claim with the Board on October 30, 2000. After proceeding through various pleadings and discovery, a hearing was held before a panel on January 15, 2003. The Board found in favor of Plaintiff on the contract claim and entered an Opinion and Final Order on November 6, 2003, awarding Fifteen Thousand Dollars (\$15,000.00) with interest thereon at the rate of six percent (6%) from April 3, 2000. In addition, the Board granted Plaintiff's request for an award of a penalty and attorneys' fees.

On November 17, 2003, the Defendant filed with the Board a document entitled Department's Motion for Post-Trial Relief and a Brief in Support thereof. Rule 801 of the Board's Rules of Procedure prohibits post-hearing motions. However, the Board does have authority to address a request for reconsideration timely made. See, Moore v. Moore, 634 A.2d 163, 166 (Pa. 1993) ("A motion for reconsideration is not a post-trial motion. A motion for reconsideration is addressed to the sound discretion of the trial court and may be filed within thirty days of the date of the order upon which reconsideration is sought."). The Board views Defendant's November 17, 2003, motion as one for reconsideration.

Defendant has brought to the Board's attention the inapplicability of 62 Pa. C.S.A. §3935 as a statutory basis for the award of a penalty and attorneys' fees in its Order of November 6, 2003. A review of 62 Pa. C.S.A., Chapter 39 confirms that §3935 is only applicable to contracts entered into through competitive sealed bidding or competitive sealed proposals. See, Pa. C.S.A. §3901. There is no such evidence of record in this case. Moreover, "Contract" in Chapter 39 is defined as a contract exceeding \$50,000. See, 62 Pa. C.S.A. §3902. The amount of the contract in this case is less than \$50,000. In basing its award of penalty and attorneys' fees in this case on the provisions of Pa. C.S.A. §3935, this Board committed a clear error of law.

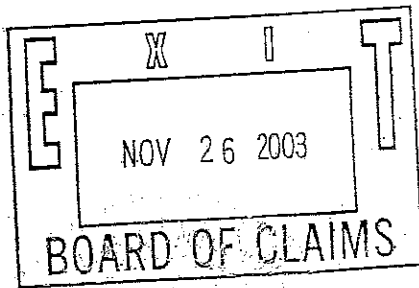
Defendant's other objections to the Board's Opinion and Order of November 6, 2003, are without merit. Accordingly, the Board shall enter the following Order.

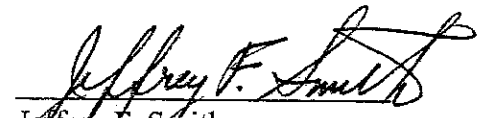
ORDER

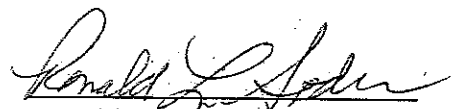
AND NOW, this 26<sup>th</sup> day of November, 2003, Defendant's Motion for Reconsideration is **GRANTED** in part and **DENIED** in part. It is **ORDERED** and **DECREED** that the Board's Opinion and Order of November 6, 2003, is hereby amended to eliminate the award of penalties and attorneys' fees to Plaintiff. Judgment shall be entered in this case in favor of Plaintiff, Dome Corporation of North America and against Defendant, Commonwealth of Pennsylvania, Department of Transportation in the sum of Fifteen Thousand Dollars (\$15,000.00) with interest thereon at the legal rate of six percent (6%) per annum from April 3, 2000.

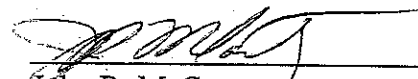
Each party shall bear its own costs.

BOARD OF CLAIMS



  
Jeffrey F. Smith  
Chief Administrative Judge

  
Ronald L. Soder, P.E.  
Engineer Member

  
John R. McCarty  
Citizen Member