



Via E-mail only

August 14, 2014

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Re: Appeal filed by the Association for Challenge Course Technology (ACCT) with the ANSI Board of Standards Review (BSR) in connection with its decision to approve *PRCA 1.0-.3-2014 Ropes Challenge Course Installation, Operation & Training Standards* as an American National Standard

Dated Notice

Dear Appeals Participants:

On August 7, 2014 the ANSI Board of Standards Review (BSR) heard the above appeal. The decision of the ANSI BSR follows.

Please be advised that **this transmission via E-mail constitutes your official notification of the decision of the BSR.**

Parties to the appeal who believe that they have been or will be adversely affected by the results of the subject hearing are hereby notified of their right of further appeal to the ANSI Appeals Board.

Should you choose to appeal this decision to the ANSI Appeals Board, written notice of appeal and all appeals statements and supporting documentation must be filed with the Secretary of the ANSI Appeals Board (the office of the undersigned) by **September 5, 2014**. The appeal shall be accompanied by a check in the amount of \$500.00 as a filing fee. If you require an extension for the filing of appeals materials, you must contact the Secretary of the ANSI Appeals Board on or before **September 5, 2014**, or you will forfeit your right to further appeal. The appeals statement must specify the decision from which the appeal is taken, the ANSI body that made the decision, a short statement of the matter in controversy and the reason(s) why the Appellant believes the decision is in

error. The appeals statement must also list all other parties that appeared before the ANSI body with respect to the matter being appealed. A copy of the *ANSI Appeals Board Operating Procedures* is attached to the E-mail that transmitted this decision.

Thank you for your attention to this matter. If you have any questions, or if I may be of assistance to you, please contact me at (212) 642-4914 or send an E-mail to acaldas@ansi.org.

Sincerely,
Anne

Anne Caldas
Secretary
ANSI Board of Standards Review

cc: P. Griffin, ANSI VP & General Counsel
L. Hallenbeck, ANSI VP Accreditation Services
ANSI Board of Standards Review

**ANSI BOARD OF STANDARDS REVIEW (BSR)
SUMMARY DECISION**

In response to the appeal filed by the Association for Challenge Course Technology (ACCT) with the ANSI Board of Standards Review (BSR) in connection with its decision to approve *PRCA 1.0-.3-2014 Ropes Challenge Course Installation, Operation & Training Standards* as an American National Standard (ANS), the ANSI BSR denies the appeal and upholds its prior decision to approve.

Appellant:

Represented by: Mr. Dan Bart, Attorney & ACCT Consultant
Mr. James Borishade, Executive Director, ACCT
Mr. Don Stock, The Adventure Guild, ZIPStream Aerial Adventures

Respondent:

Represented by: Mr. Mike Barker, VP PRCA Board of Directors
Mr. Steve Oksala, PRCA Consultant
Mr. Steve Peluso, Attorney

Hearing Date: August 7, 2014

Hearing Location: ANSI, New York

ANSI Board of Standards Review Panel

Mr. Paul Bralower
Ms. Gabriella Davis
Ms. Cristine Fargo
Mr. Steve Ferguson, Chair
Ms. Megan Hayes
Ms. Pat McGuillicuddy
Ms. Nathalie Rioux

I. Introduction

ACCT (Appellant) appeals the decision of the ANSI Board of Standards Review (BSR), issued on March 3, 2014, to approve *PRCA 1.0-.3-2014 Ropes Challenge Course Installation, Operation & Training Standards* as an American National Standard (ANS).¹ An appeals hearing was held by the BSR on August 7, 2014. For the reasons set forth below, the BSR denies the appeal and upholds its prior decision to approve.

¹ The ANSI BSR is the ANSI Program Oversight Committee responsible for approval, disapproval or withdrawal of candidate and approved American National Standards.

II. Background to Appeal

PRCA, the respondent in this appeal, was accredited as a standards developer by the ANSI Executive Standards Council (ExSC) on December 2, 2005. The Association for Challenge Course Technology (ACCT), the appellant, was accredited by the ANSI ExSC on July 7, 2006. The scope of standards development activity of the appellant and the respondent are similar.

In 2006, ACCT filed appeals with the ExSC challenging its decision to accredit PRCA, arguing that PRCA's accreditation should be withdrawn because PRCA lacked the basic competence to meet ANSI's requirements, failed to follow its accredited procedures relating to balance by excluding knowledgeable practitioners, such as ACCT, from its consensus body and promulgated procedures on "consensus" that are not in compliance with ANSI's *Essential Requirements*.

A hearing was held in September 2006, and a decision issued on October 11, 2006, in which the ExSC directed both parties to: "*undertake and document standards development related coordination efforts for review by the ANSI Board of Standards Review (BSR) in connection with the submittal of any standards by either party for approval as American National Standards.*"

Six years later, in November 2012, PRCA submitted to ANSI a BSR-9 form² seeking approval of *PRCA 1.0-.3-2014* as an ANS. Upon review by the BSR, PRCA was directed to process two appeals, one brought by James Borishade and the other by Don Stock, and to provide additional information to the BSR after those appeals were completed at the developer level. A year later, on December 19, 2013, PRCA submitted an updated BSR-9, which answered the BSR's questions and provided sufficient evidence of compliance with the BSR's requirements.³ Accordingly, on March 3, 2014 *PRCA 1.0-.3-2014* was approved as an ANS.

This appeal followed⁴. The appeal requests that the ANSI BSR reverse its decision regarding the approval of the standard. As detailed below, the BSR upholds its prior decision to approve and denies this appeal.

III. Summary of Appellant's Claims, PRCA's Responses and ANSI BSR Findings⁵

ACCT argues on this appeal that PRCA knowingly engaged in numerous procedural violations in the development of *PRCA 1.0-.3-2014* – including failures to comply with: 1) the ANSI ExSC 2006 appeals decision which required coordination between the two parties; 2) a number of provisions contained in the *ANSI Essential Requirements*, including provisions relating to the processing of appeals; 3) PRCA's own accredited procedures with respect to promptness of replies to comments,

² BSR-9 is the ANSI required checklist that accompanies the submittal of evidence of consensus in support of a document's approval as an ANS.

³ This evidence included documentation that confirmed Mr. Borishade's appeals hearing before a PRCA Panel and the issuance of a developer-level appeals decision that directed PRCA to notify again, in writing, 33 unresolved objectors (and any others) who were issued flawed appeals notifications, i.e., notifications that could have been read to require a \$500 appeals filing fee per comment submitted. Mr. Stock's appeal was not perfected as the deadline for filing an appeal expired prior to his contact with PRCA.

⁴ This appeal requested two actions: 1) suspension of the BSR's decision to approve, pending conclusion of appeals at ANSI; and 2) reversal of the decision to approve. On April 28, 2014, the BSR denied the request to suspend and therefore this decision addresses only the appeal of the decision to approve.

⁵ This decision summarizes the key oral and written arguments presented to the BSR. While this decision may not reference every argument or point made in connection with the appeal, the BSR had full access to the complete record. The BSR does not evaluate any technical data or make any assessment of the merits of the technical content of the proposed standard or any other matter. The BSR relied on the written record and oral statements made by all parties regarding procedural matters only.

quorum requirements, proper processing of alleged substantive changes and the use of a sub-committee to respond to public comments without subjecting those responses to a vote of the consensus body. In addition, ACCT raises a number of miscellaneous arguments which we find irrelevant to the appeal. For the reasons set forth below, we find ACCT's arguments unpersuasive.

PRCA Fully Complied with the 2006 ANSI ExSC Appeals Decision

The appellant's first argument, that PRCA failed to comply with the ExSC's 2006 appeals decision requiring coordination of efforts with respect to standards development activities and documentation of same, is not supported by the evidence. ACCT argues that PRCA was sloppy and deceptive and that its process was plagued by delays. Appellant also notes that PRCA refused to provide it with a copy of the original BSR-9 submittal, leaving it in the dark about the standard's status.

PRCA acknowledges typographical errors, e.g., "2012" should have been "2013", and extended response times, but asserts that it undertook meaningful attempts to work with ACCT throughout the process. These included offering consensus body membership to ACCT, considering joint publication and joint standards development efforts, extending opportunities to join PRCA's Standards Management Committee and others.

We find that PRCA did indeed demonstrate good faith efforts to satisfy the ExSC's direction. Although we would like to have seen a shorter development timeframe, PRCA satisfactorily explained some of the pitfalls along the way and demonstrated its good faith. Finally, the ExSC's 2006 appeals decision did not require PRCA to notify ACCT of its BSR-9 submittal or provide a copy of it.

PRCA Complied with the ANSI Essential Requirements

ACCT's next argument, that PRCA failed to comply with the *ANSI Essential Requirements*, is also unsupported by the facts. Specifically, ACCT argues that PRCA violated the *Essential Requirements* by: (1) failing to promptly process the Borishade and Stock appeals; (2) suggesting that public review commenters would have to pay a \$500 appeals filing fee per comment, thereby potentially dissuading such commenters from filing such appeals; (3) failing to follow ANSI's requirements for balance as it applies to a "safety" standard; (4) limiting the second (and third) public review opportunities by not making the entire document available again for public comment; and (5) failing to subject substantive changes to public review.

PRCA responds that: (1) although it initially believed it implemented its appeals process properly, it took timely action in response to the BSR's directives to conclude the developer-level appeals process; (2) in response to the developer-level appeals panel decision, it clarified its appeals fees provision to ensure that appeals fees are fixed, predetermined and reasonable and gave all of the unresolved objectors that might have been dissuaded from filing an appeal a second opportunity to appeal to PRCA within a reasonable time period (none did); (3) it undertook appropriate outreach to engage stakeholders to achieve the historical balance requirements on the consensus body for safety standards; (4) it was not required under the *Essential Requirements* or ACCT's accredited procedures to seek public review on the entire document in response to comments received; and (5) no evidence was provided that substantive changes were made to the document without the required public review.

The BSR agrees that PRCA took the necessary corrective actions to implement the appeals process anew and in a manner consistent with the BSR's reading of PRCA's procedures. The ensuing

sequence of events was timely and adequate and the resulting appeals decision reflects a fair and impartial process. In addition, PRCA appropriately responded to the developer-level appeals panel decision, requiring that PRCA clarify its appeals process and provide a second opportunity to all commenters to appeal. Similarly PRCA appropriately engaged in outreach efforts in satisfaction of the balance requirements contained in the *Essential Requirements*.

Finally, it is a common and acceptable practice to limit the text which is available for comment in a second or third public review to just the substantive changes made to the document since the prior public review. As the consensus body saw the unresolved public review comments and votes, the responses to them and the related substantive changes, they had the opportunity to vote negatively on the final text of the standard if they wished to do so (meeting the requirements of Section D.3 of PRCA's procedures). In addition, there was no evidence to support ACCT's claims that PRCA ignored any substantive comments and the ACCT representatives attending the appeals hearing were unable to point to a single example. In all events, the BSR does not review the technical content of standards and in general, relies on the standards developer to make such decisions consistent with the definition of "substantive change" contained in the *ANSI Essential Requirements*.

In short, although the standards development process experienced substantial delays, those delays were due, in part, to the fact that PRCA was taking corrective actions in response to its own appeals panel decision and the ANSI BSR. In the end, the BSR does not find any compelling evidence that PRCA breached the *ANSI Essential Requirements*.

PRCA Complied with its Own Accredited Procedures

ACCT's arguments that PRCA failed to comply with its own accredited procedures are without merit. Specifically, ACCT contends that PRCA did not respond to its public comments within 60 days per C.4 of PRCA's accredited procedures, which states in part that "[a]ll feedback from interested parties will be reviewed and responded to within sixty (60) days in writing..." As a result, ACCT maintains that its concerns were not given "prompt consideration" as required.⁶ ACCT also maintains that, without a quorum, PRCA improperly constituted and engaged a sub-committee of the Standards Committee (consensus body) to review and respond to comments, which was in violation of D.3 of PRCA's accredited procedures. Additionally, ACCT suggests that PRCA's standard and subsequent development was brokered by one person.

At the hearing, PRCA acknowledged that its goal of responding to all public comments within 60 days was "ambitious" and that it was unable to provide a response within that timeframe, noting some one thousand public comments received. However, written acknowledgements of the comments were issued, including a 2009 letter to Ms. Dresser, who held Mr. Borishade's position at that time, and a 2012 letter from Mr. Kerns to Mr. Borishade.

The BSR notes that there is some ambiguity in PRCA's procedures regarding the timeframe that applies to responses to public review comments. PRCA's procedures indicate that D.5, rather than C.4, applies to public review comments and responses. This provision does not specify a 60 day

⁶ ACCT also maintains that it never received PRCA's February 2012 response to comments prior to this appeal. The BSR takes both parties at their word and assumes that the response was transmitted, but for some reason, not received. PRCA is advised to exercise care to properly date all communications and ensure that records related to the issuance of such correspondence are securely and routinely maintained as they will be subject to ANSI's audit process. For example, use and retention of return receipts or other formal acknowledgment of important correspondence is suggested.

response period. In any event, even if the procedures do require 60 days, that timeframe is not in fact required by the *ANSI Essential Requirements* and there is no evidence that anyone was prejudiced by the delay.

With respect to the establishment of a sub-committee and the applicability of quorum requirements, we find that PRCA's accredited procedures on file with ANSI are silent as to the handling of public comments. Indeed, it was determined that Section D.3 of PRCA's accredited procedures are specifically related to "...the approval of a document...as a candidate ANS..." and not related to the comment response process. PRCA's procedures are also silent on the definition of "quorum". Unless a developer's procedures state otherwise, ANSI does not require that a consensus body vote on responses to public comments. Nor do ANSI's procedures prohibit one person, as opposed to the entire consensus body, from drafting a standard or responding to public comments.

ACCT's Remaining Arguments are Irrelevant and/or Outside the Scope of this Appeal

ACCT raises a number of other issues that the BSR deems irrelevant to the appeal as they are unrelated to PRCA's accredited procedures or the *ANSI Essential Requirements*. These include allegations of false or misleading advertising or press releases, comparisons between ACCT and PRCA in terms of organizational size, history and membership, facts relevant to ACCT's standards development process and claims that PRCA has made misrepresentations throughout the standards development process. These claims are not relevant to the decision to approve a standard as an ANS. To the extent sloppiness on PRCA's part was demonstrated, corrective actions were taken to remediate past errors.

Although referenced throughout the appeal, PRCA's "Procedures & Operating Rules Governing PRCA Standards Committees" are not part of its accreditation file and the BSR did not rely on them during the consideration of this appeal. That said, the BSR requests that PRCA: 1) submit the supplemental procedures immediately to the ANSI ExSC for review, but if PRCA does not wish to do so voluntarily, then the BSR will ask the ANSI ExSC to require submittal of that document; and 2) PRCA reconsider and revise its 60 day response window to allow for some flexibility within generally accepted parameters for "prompt" responses.

Conclusion

The BSR finds that ACCT has not provided sufficient or compelling evidence to warrant the withdrawal of the approval of PRCA 1.0-.3-2014 as an American National Standard. While PRCA's standards development process necessitated corrective actions prior to the BSR's final decision to approve, those actions were taken to the satisfaction of the BSR and we believe that due process was afforded ACCT and other participants.

Accordingly, in light of the written evidence and oral testimony presented by all parties and based on the specific discussions set forth earlier in this decision, the ANSI BSR denies the appeal and finds that its prior decision to approve PRCA 1.0-.3-2014 as an ANS was appropriate. As a result, PRCA 1.0-.3-2014 remains an approved American National Standard.