



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: March 13, 2014

CBCA 1512-R, 1537-R

SYSTEMS INTEGRATION & MANAGEMENT, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Stuart W. Turner and Emma V. Broomfield of Arnold & Porter, LLP, Washington, DC, counsel for Appellant.

Nathan C. Guerrero, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS** and **GOODMAN**¹.

SOMERS, Board Judge.

In *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 1512, et al., 13 BCA ¶ 35,417, we granted the appeals of Systems Integration & Management, Inc. (SIM). As we noted in our decision, after reviewing all of the evidence presented, including extensive appeal files, transcripts from six days of testimony, and

¹ Judge Anthony S. Borwick, a member of the panel which decided this case, retired from the Board in December 2013. Because this decision involves reconsideration of the original opinion, no new judge has been added to the panel. See *Universal Restoration, Inc. v. United States*, 798 F.2d 1400, 1406 n.9 (Fed. Cir. 1986).

voluminous pre-trial submissions and post-trial briefs, we concluded that the preponderance of the evidence supported SIM's claims for payments of unpaid invoices.

Respondent seeks reconsideration of the Board's decision. The Board finds that the numerous allegations in respondent's motion are either incorrect or immaterial to the decision. We deny respondent's request for reconsideration because the grounds submitted by respondent do not warrant reconsideration under the Board's Rules.

Review of a motion to reconsider is governed by the standards set out in Board Rule 26 (48 CFR 6101.26 (2013)). As the Board has stated,

The Board's Rule 26 explains that reconsideration may be granted for any of the following reasons set out in Rule 27(a): newly discovered evidence which could not have been earlier discovered, even through due diligence; justifiable or excusable mistake, inadvertence, surprise, or neglect; fraud, misrepresentation, or other misconduct of an adverse party; the decision has been satisfied, released or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application; the decision is void, whether for lack of jurisdiction or otherwise; or any other ground justifying reconsideration, including a reason established by the rules of common law or equity applicable as between private parties in the courts of the United States.

Ryll International, LLC v. Department of Transportation, CBCA 1143-R, 12-1 BCA ¶ 35,029 (citing *Oregon Woods, Inc. v. Department of the Interior*, CBCA 1072-R, 09-1 BCA ¶ 34,063, at 168, 431-32, *aff'd sub nom. Oregon Woods, Inc. v. Salazar*, 355 F. App'x 403 (Fed. Cir. 2009); *W.G. Yates & Sons Construction Co. v. General Services Administration*, CBCA 1495-R, 12-1 BCA ¶ 35,038 (2011); *Springcar Co. v. General Services Administration*, CBCA 1310-R, et al., 10-2 BCA ¶ 34,534, at 170,332).

Reconsideration is not a vehicle for retrying a case or introducing arguments that have been made previously. *Ryll International*, 12-1 BCA at 172, 144 (citing *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Department of Health and Human Services*, CBCA 237-ISDA-R, 10-2 BCA ¶ 34,476, at 170,043). Significantly, Rule 26(a) also cautions that "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing." *Id.* (citing *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784, at 167,203).

In its motion for reconsideration, GSA asserts (1) that the Board failed to consider its arguments in CBCA 1537, (2) that the Board did not properly apply the burden of proof in both CBCA 1512 and CBCA 1537; and (3) the Board's decision as a whole is simply inadequate because it "makes factual pronouncements with no citation to record evidence or even an explanation of the premise of the factual determination." GSA concludes its introductory paragraph by asserting that "the purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence," citing *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3rd Cir. 1985).² To establish each of these points, GSA simply reargues the same issues and arguments it presented before the decision was issued.

In support of its first ground for reconsideration, GSA asserts that the Board failed to consider the testimony of the contracting officer for the Region 1 task order (CBCA 1537), and that the Board ignored evidence presented by GSA concerning the task order. To the contrary, the Board expressly cited to the contracting officer's testimony in the decision, *Systems Integration & Management*, 13 BCA at 173,759-60, and addressed the task order in its discussion, *id.* at 173,761. Rather than ignoring GSA's evidence on this point, the Board clearly considered, and rejected, GSA's argument that SIM did not timely submit invoices for the Region 1 task order.³

As its second ground for reconsideration, GSA asserts that the Board failed to properly apply the burden of proof. In support of this assertion, GSA again cites to the same arguments and evidence that the Board expressly considered, and ultimately rejected. Nothing supports GSA's contention that the Board failed to apply the proper burden of proof. Rather, as noted in our decision, the contractor had the burden to prove "that it

² In *Harsco*, the plaintiff sought declaratory judgment that it owned an invention developed while by the defendant while he was employed by the plaintiff. After the court granted summary judgment in favor of the plaintiff, the defendant filed a motion for reconsideration, which the court subsequently denied. Citing *Harsco*, GSA recites a different standard from the one contained in Board Rule 26. Under our Rules and case law, GSA fails to provide adequate grounds to support its motion for reconsideration.

³ GSA cites to footnote 4 of the Board's decision to support its contention that the Board ignored its arguments related to the task order. As appellant correctly concluded in its opposition to respondent's motion for reconsideration, this footnote contained a typographical error. The Board intended to say that "GSA did not address this task order in its post-hearing *reply* brief." The statement in that footnote is immaterial to our decision, so correcting the statement does not merit reconsideration. *Cf. Oregon Woods*, 09-1 BCA at 168,432 n.2.

delivered the [services] in accordance with the contract requirements, that it properly and timely submitted invoices for those services, and that such services remained unpaid by the Government.” *Systems Integration & Management*, 13 BCA at 173,761 (citing *Ahmed S. Zhickrulla*, ASBCA 52137, 03-2 BCA ¶ 32,409, at 160,420). After examining all of the evidence before us, we determined that appellant had met its burden of proving its *prima facie* case through documents and testimony. We next turned to the evidence presented by GSA, and found it insufficient to rebut appellant’s *prima facie* case, relying, in significant part, on the testimony of government witnesses, whose testimony supported appellant’s contention that the services had been provided and that invoices had not been paid. GSA has not explained how the standards set forth in Rule 26 require the Board to reconsider this analysis.

Finally, GSA claims that the Board’s decision “contains manifestly inadequate factual determinations and citations to the record to allow the parties, or anyone reading the decision for that matter, to make a determination regarding the Board’s factual conclusions and decision on entitlement.” In particular, GSA asserts that the decision does not provide it with enough information to allow it to calculate interest due on the unpaid invoices under the Prompt Payment Act, 31 U.S.C. § 3903 (2006), because the decision does not list for each individual invoice the agency’s receipt. However, GSA already possesses the information necessary to calculate the interest due. Indeed, the contracting officer’s final decision, dated December 18, 2008, identifies each of the forty-five invoices sought in CBCA 1517 by invoice number, period of performance, and date of submission. GSA’s contention that the decision will lead to “needless confusion and perhaps further litigation” ignores the factual information in the record to support the calculation of interest.

Decision

For the reasons set forth above, respondent’s motion for reconsideration of the Board’s decision is **DENIED**.

JERI KAYLENE SOMERS
Board Judge

I concur:

ALLAN H. GOODMAN
Board Judge

