



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: August 5, 2014

CBCA 3288-R

JRS MANAGEMENT,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Jacqueline R. Sims, Owner of JRS Management, Lawrenceville, GA, appearing for Appellant.

William D. Robinson and Nihar H. Vora, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, Washington, DC, counsel for Respondent.

Before Board Judges **STERN**, **VERGILIO**, and **McCANN**.

VERGILIO, Board Judge.

JRS Management (contractor) filed an appeal contesting the denial of its claim to receive \$18,431.75 from the Department of Justice (agency) regarding their contract and task order under which the contractor was to provide culinary arts instructor services at a correctional institution. The contractor alleged various instances of breach of contract by the agency, as well as agency breach of the covenant of good faith and fair dealing, and, regarding the non-exercise of an option to extend the contract, bad faith, and an arbitrary and capricious abuse of discretion. Referencing Board Rule 12(c), 48 CFR 6101.12 (2013), the agency filed a motion to dismiss. Treating the motion as one for summary relief, the Board denied the claim. *JRS Management, Inc. v. Department of Justice*, CBCA 3288, 14-1 BCA ¶ 35,617. The contractor seeks reconsideration of that decision. The contractor contends that it (1) lacked notice that the Board would treat the motion as one for summary relief and (2) was not given the opportunity to respond to such a converted motion.

As the underlying opinion reveals, after receipt of the agency's motion to dismiss, the contractor submitted an amended complaint and additional evidence, as well as a response in opposition to the motion. The amended complaint and additional evidence went beyond the initial pleadings addressed in the agency's motion to dismiss. The issues raised by the contractor were controlled by the contractual language. Consistent with the agency's motion, undisputed material facts supported the position of the agency and demonstrated that the contractor could not prevail on its theories of relief. The Board found that discovery would not alter the result. This enabled the Board to reach the merits and deny the counts of the claim put forward by the contractor.

While the contractor asserts error by the Board, the contractor has identified no error. The contract interpretations alleged by the contractor in its complaint and amended complaint are not facts; the Board was not required to presume that the contractor's interpretations were correct. Factually, the contractual language was not disputed. The plain language of the contract permitted resolution under a motion to dismiss or under a motion for summary relief. Any related factual issues raised by the contractor which could impact the resolution were speculative at best, and under the summary relief standard were viewed favorably toward the contractor, the non-moving party. While the contractor was precluded from pursuing discovery, the contractor has not demonstrated that discovery was appropriate or needed, or could have altered the result. The Board found that the contractor could not prevail even if it was able to prove the facts it alleged. Thus, the contractor has not identified error by the Board or demonstrated how any alleged error was other than harmless error.

Decision

The Board **DENIES** the contractor's request for reconsideration.

JOSEPH A. VERGILIO
Board Judge

We concur:

JAMES L. STERN
Board Judge

R. ANTHONY McCANN
Board Judge