



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: November 9, 2016

CBCA 5232-R

NATIVE AMERICAN CONSTRUCTION SERVICES, LLC,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

John M. Peebles and Ross D. Colburn of Fredericks Peebles & Morgan LLP, Sacramento, CA, counsel for Appellant.

Paul Sax, Office of the Regional Solicitor, Department of the Interior, Lakewood, CO, counsel for Respondent.

CHADWICK, Board Judge.

Native American Construction Services, LLC (NACS) timely sought reconsideration of our single-judge decision denying its appeal, *Native American Construction Services, LLC v. Department of the Interior*, CBCA 5232, 16-1 BCA ¶ 36,512. Familiarity with that decision is assumed. We denied relief after an accelerated hearing because NACS presented no evidence from which we could have calculated damages if we had found that the Bureau of Land Management (BLM), a component of the respondent, Department of the Interior, breached the contract. NACS alleges no error in our decision, but asks us to grant reconsideration under Board Rule 27(a)(6) (48 CFR 6101.27(a)(6) (2016)) solely in order to find a breach, which is important to NACS because it is still performing the contract and wishes to stop doing what it considers uncompensated extra work.

We deny the motion because the request for non-monetary relief is new and inconsistent with the way NACS previously litigated the appeal. Although the claim that NACS submitted to the contracting officer alleged in part that BLM's imposition of extra work "created an unfunded burden," NACS sought only an award of damages in its complaint and did not ask for a freestanding finding of breach. NACS then elected the small claims procedure of Rule 52, which is solely for monetary claims. *Packer v. Social Security Administration*, CBCA 5038, et al., 15-1 BCA ¶ 36,178. In its post-hearing brief, NACS again requested only monetary relief. NACS does not dispute that we properly denied such relief, without interpreting the contract, on finding that NACS offered "no real proof of any damage, i.e., . . . monetary injury as a result of" BLM's conduct. *Assurance Co. v. United States*, 813 F.2d 1202, 1205 (Fed. Cir. 1987). As our disposition was correct on the merits and consistent with the procedure NACS chose, we lack grounds to revisit it.

Decision

The motion for reconsideration is **DENIED**.

KYLE CHADWICK
Board Judge