UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: October 21, 2016

CBCA 4012-R, 4013-R, 5083-R

UNIVERSAL HOME HEALTH AND INDUSTRIAL SUPPLIES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Anthony R. Smith, President of Universal Home Health and Industrial Supplies, Inc., Tampa, FL, appearing for Appellant.

David G. Fagan, Office of Regional Counsel, Department of Veterans Affairs, Portland, OR, counsel for Respondent.

Before Board Judges **GOODMAN**, **WALTERS**, and **SULLIVAN**.

SULLIVAN, Board Judge.

In *Universal Home Health & Industrial Supplies, Inc. v. Department of Veterans Affairs*, CBCA 4012, *et al.*, 16-1 BCA ¶ 36,370, we decided the appeals filed by appellant, Universal Home Health and Industrial Supplies, Inc. (Universal), following the termination for default and subsequent conversion to termination for convenience of two task orders to provide cardiac monitoring services for the Department of Veterans Affairs (VA). We dismissed the appeals of the terminations for default (CBCA 4012 and 4013) as moot. Upon finding no evidence of bad faith or an abuse of discretion on the part of agency officials in the decision to terminate the task orders for convenience, we denied Universal's appeal of the terminations for convenience (CBCA 5083). Familiarity with that decision is presumed.

Universal seeks reconsideration of the Board's decision, based upon twenty alleged "mistakes in critical evidence," evidence that Universal believes the Board failed to consider or consider fully in rendering its original decision. Universal also describes how these alleged mistakes affected the Board's decision and, once corrected, how the Board may "amend its decision and grant damages and any and all recoverable costs" to Universal. After careful review of the points raised by Universal in its motion, the Board sees no new evidence and discerns no errors in its original opinion. Universal's request for reconsideration is denied.

Rules 26 and 27 of the Board's rules set forth the standards by which a motion for reconsideration will be evaluated:

> [R]econsideration may be granted for any of the following reasons: 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 establish by the rules of common law or equity applicable as between private parties in the courts of the United States.

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). Reconsideration is not a vehicle for retrying a case or introducing arguments that could have been made previously. *See Ryll International, LLC v. Department of Transportation*, CBCA 1143-R, 12-1 BCA ¶ 35,029, at 172,144. "Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." Rule 26 (48 CFR 6101.26 (2015)).

In its motion, Universal largely presents arguments already made or seeks reinterpretation of the evidence already presented to the Board. For example, Universal challenges the Board's characterization of an internal email message sent by the contracting specialist before he contacted Universal about the reports of potential service interruptions. Universal notes that the contracting specialist used the phrase "upon termination," and argues that this phrase is evidence that the agency had already decided to terminate Universal and issue a contract to its subcontractor, MedNet. As detailed in the Board's decision, the Board fully considered this email message as part of all the

evidence of the conduct and communications between the parties and found no evidence that the agency's termination of Universal was undertaken in bad faith. In its review of Universal's motion, the Board finds that points numbered 1, 3-7, and 9 all seek reinterpretation of evidence the Board has already considered. Arguments about evidence the Board has already considered do not present a basis for reconsideration. *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 1512-R, *et al.*, 14-1 BCA ¶ 35,543, at 174,171.

Universal also seeks to dispute the conclusions that the Board drew from the evidence it considered. For example, Universal takes issue with the Board's determination that the agency provided "Universal opportunities to resolve the situation and provide assurance of future performance" prior to terminating Universal's contract. With points numbered 13-17, Universal seeks to challenge the Board's conclusions, but disagreement with the Board's conclusions based upon evidence that has already been considered does not provide a basis for reconsideration.

Universal points to perceived errors in the manner in which it was contacted initially about the potential service disruption (point 2). Specifically, Universal asserts that the contracting officer's representative (COR), the program person monitoring Universal's performance, was required to contact Universal, rather than the contracting specialist who actually did. As support, Universal cites to a draft quality assurance plan attached to the solicitation. The statement of work that was incorporated into the contract does not contain this requirement, but, even if it did, the fact that the contracting specialist rather than the COR contacted Universal is not material to the Board's analysis of the actions taken by the agency and does not provide a basis for reconsideration. *See Ryll International LLC*, 12-1 BCA at 172,145. Universal also believes that the Board made an error in not finding that agency contracting officials waited two days before contacting Universal about the potential service interruptions. Universal is incorrect–the contracting specialist sent Universal an e-mail message the day after the COR received notice of potential service interruptions and asked that Universal's president call him.

Universal also raises several points concerning the follow-on bridge contract that the agency issued to fill the requirement after Universal's task orders were terminated (points numbered 8, 10 and 18). Universal questions the Board's conclusions as to who the follow-on contractor was and what the relationship was between that contractor and Universal's supplier. Universal also states repeatedly that the contracting officer signed the sole source justification for the bridge contract prior to terminating Universal's task orders. However, the Board made this finding in its original decision. Universal states that the Board has not identified any evidence to prove that the bridge contract was "not fraudulent." The Board reviewed all of the evidence presented by Universal and made

findings based upon those documents. Regardless of the points raised by Universal, there is nothing in the evidence or the record to indicate that the issuance of the follow-on contract was fraudulent.

The Board also found that Universal had not provided any evidence to support its claim that the VA paid significantly more for the services under the bridge contract than it did under Universal's contract. In response to this finding, Universal highlights evidence in the record and additional evidence attached to its motion that shows the price of the services to be provided by another firm, Cardio Labs, on a contract that was awarded in April 2015. This contract is not the follow-on sole source contract that was awarded to CardioNet following the termination of Universal's contract. The Board fails to see the relevance of this 2015 contract to an inquiry into whether the conduct of contracting officials evidences a "specific intent to injure" Universal. *V.I.C. Enterprises, Inc. v. Department of Veterans Affairs*, CBCA 1598, 09-2 BCA ¶ 34,284, at 169,363-64 (quoting *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1240 (Fed. Cir. 2002)).

Universal also notes that the Board did not address two motions that it made in its final briefing: (1) to overturn the contracting officer's decision on its claim arising from the conversion to a termination for convenience and (2) to strike the brief submitted by respondent in response to the Board's order (points 11, 12). Universal is correct that the Board did not specifically note these motions in its decision, but it was not necessary to do so. With its appeal of the contracting officer's decision (CBCA 5083), Universal sought to overturn the contracting officer's decision. The Board, in denying the appeal, denied Universal's motion. As noted, the Board ordered supplemental briefing after the appeal was filed and counsel for respondent filed a supplemental brief. Universal's objection to arguments that respondent made in that brief does not provide a basis for striking the brief or granting reconsideration.

Finally, Universal takes issue with the Board's restatement of its argument that the contracting officer should have reinstated the task orders instead of converting the terminations for cause to terminations for convenience (point 19). The Board's restatement of Universal's argument did not change the Board's analysis of Universal's contention. Universal also asserts that the Board identified no factual or legal basis for the Board's determination that the contracting officer could not reinstate Universal's task orders (point 20). The Board did state a basis for that determination–the underlying schedule contract had expired and with it the contracting officer's authority to issue task orders from it.

Decision

The motion for reconsideration is **DENIED**.

MARIAN E. SULLIVAN
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

RICHARD C. WALTERS
Board Judge