



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: June 14, 2021

CBCA 6809-R

S & DF PROPERTIES, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Steve Forti, Managing Member of S & DF Properties, LLC, El Paso, TX, appearing for Appellant.

Jay Bernstein, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair) and **ZISCHKAU**.¹

BEARDSLEY, Board Judge.

Appellant, S & DF Properties, LLC (S&DF), timely requested reconsideration of the Board's April 21, 2021, decision denying its appeal and request for reimbursement of the real estate tax assessment using 2013 as the tax base year. The Board determined that the decision of the General Services Administration (GSA) contracting officer to use 2016 as the

¹ Judge Catherine B. Hyatt, a member of the panel who participated in our original decision, retired from the Board on May 31, 2021. Because this decision involves reconsideration of the original opinion, no new judge has been added to the panel.

tax base year was consistent with the terms of the lease. For the reasons stated below, we deny S&DF's request for reconsideration.

The Board may grant reconsideration if it is presented with “an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5698-R, 20-1 BCA ¶ 37,521 (quoting *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (per curiam)). The party requesting reconsideration “bears the burden of establishing that the Board’s decision contains substantive errors that are substantial enough to warrant relief.” *SRM Group, Inc. v. Department of Homeland Security*, CBCA 5194-R, et al. (May 26, 2021). S&DF has failed to meet this burden.

In seeking reconsideration, S&DF makes the same arguments previously considered and decided by the Board. S&DF argues that GSA failed to advise S&DF that the base tax year would be the first full tax year following the commencement of the lease term per section 2.07 of the lease and not the base tax years recorded on GSA Form 1217. S&DF again asserts that GSA and S&DF negotiated a base tax year of 2013 and that section 1.14, Real Estate Tax Base, was wrongly crossed out in the executed lease. “Arguments and evidence previously presented are not grounds for reconsideration.” Rule 26(a) (48 CFR 6101.26(a) (2019)).

S&DF further contends for the first time that the lease contracting officer violated the General Services Acquisition Manual (GSAM) by failing to negotiate a tax base with S&DF. GSAM 570.105-1 states, “Contracting by negotiation is appropriate for acquiring space in a building through a lease contract. The contracting officer will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.” 48 CFR 570.105-1. This argument is based on evidence that was available to S&DF before the record closed—namely, the lease contracting officer’s testimony that “[e]stablishment of a tax base for the purpose of the Real Estate Tax Adjustment Clause of the Lease was never a topic of discussion between GSA and Mr. Forti, nor was it a subject of any of the negotiations that I conducted with Mr. Forti.” This argument, therefore, is not sufficient grounds for reconsideration. *See Americom Government Services, Inc. v. General Services Administration*, CBCA 2294-R, 17-1 BCA ¶ 36,590 (2016) (reconsideration is not to be used for “introducing arguments that could have been made previously”); *Metlakatla Indian Community v. Department of Health & Human Services*, CBCA 282-ISDA-R, 10-2 BCA ¶ 34,475 (same).

Even if we were to reach the merits of this argument, however, we would deny reconsideration because S&DF’s reading of the regulation is erroneous. This regulation simply describes GSA’s method of contracting for leased property. It does not obligate GSA to negotiate a tax base year.

Decision

For the foregoing reasons, the Board **DENIES** appellant's request for reconsideration.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

I concur:

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge