UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: October 28, 2025

CBCA 8034, 8425

ALL PHASE SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Lawrence J. Sklute of Sklute & Associates, Potomac, MD, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs, Pittsburgh, PA, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **SHERIDAN**, and **SULLIVAN**.

SULLIVAN, Board Judge.

All Phase Services, Inc. (APS) moves for reconsideration of the Board's decision dated August 29, 2025, *All Phase Services, Inc. v. Department of Veterans Affairs*, CBCA 8034, 25-1 BCA ¶ 189,323, in which we granted the motion for partial summary judgment filed by the Department of Veterans Affairs (VA) and denied APS's motion for partial summary judgment.[1] We deny APS's motion.

[1] Following our decision, the Board consolidated CBCA 8034 and CBCA 8425. Order (Sept. 12, 2025) at 2.

In our decision, we found that the contracting officer properly reestablished the contract completion date (CCD) as October 10, 2024, by asking APS to submit a schedule showing this completion date in response to a cure notice. *All Phase Services*, 25-1 BCA at 189,324. APS did, in fact, submit a schedule showing final inspection in October 2024. *Id*. APS described the schedule as part of its "plan of action" and did not object to the contracting officer's direction that it assemble the schedule based on a CCD of October 10, 2024. *Id*.

"A motion for reconsideration must be based on the acquisition of newly discovered evidence or a showing of legal error." *Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350-R, et al., 18-1 BCA ¶ 36,959, at 180,084 (2017). The party seeking 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., 21-1 BCA ¶ 37,869, at 183,885, *aff'd*, No. 2021-2104, 2022 WL 1089228 (Fed. Cir. Apr. 12, 2022). "A motion for reconsideration is not an opportunity for a litigant to reargue its case." *Y2Fox, Inc. v. Department of State*, CBCA 7805-R, 24-1 BCA ¶ 38,647, at 187,873.

APS, in its motion for reconsideration (motion), argues that the Board erred in finding that the parties had established a new CCD. APS asserts that the Board failed to consider the narrative that accompanied the schedule that APS provided. Motion at 3-6. That narrative, according to APS, explained that the schedule APS provided was contingent upon APS either finding a subcontractor licensed to install the roofing material or becoming licensed itself. APS asserts that, if the Board had properly considered the narrative, which described events that did not occur, we would have recognized that the parties had a "non-existent schedule" and that October 10, 2024, could not be the new CCD or the basis for terminating APS's contract. *Id*. at 6.

APS made this argument in its summary judgment briefing, Appellant's Brief in Opposition to Supplement to VA's Motion for Summary Judgment at 14, but this argument was not supported by the document cited. *See* Exhibit 93. While APS described, as part of its "plan of action," its intention to both self-perform and use qualified subcontractors, APS did not describe the schedule as contingent upon any action. *Id*. The Board considered the narrative that accompanied the schedule that APS provided. It does not convey the information that APS urges the Board to find.

Moreover, APS's argument is not logical as a matter of law. In essence, APS urges us to reconsider our decision and find that APS could condition its performance obligation upon its ability to obtain licensed subcontractors. APS was obligated to have licensed subcontractors or be able to install the roofing material itself. It cannot condition its obligation to meet a new CCD on whether it can meet another obligation under the contract.

If APS were allowed to condition its performance obligation in this way, VA would never have been able to reset the CCD or terminate the contract. Accordingly, this argument does not provide a basis to overturn the Board's decision.

APS also argues that the Board's reliance upon the *ASC Systems Corp*., DOTCAB 73-37, et al., 78-1 BCA ¶ 13,119, was in error. We cited *ASC Systems* in our decision for the proposition that the parties reached a bilateral agreement on a new schedule date when the contracting officer requested a new date from the contractor, the contractor supplied a new date in a proposed schedule, and the contracting officer adopted the proposed schedule as the one for the contract. *Id.*, 78-1 BCA at 64,137. Relying upon *Systems and Industry Optical*, ASBCA 21635, 79-2 BCA ¶ 13,966, at 68,559, APS asserts that the contracting officer established a unilateral date and was required to consider whether APS was capable of meeting that date. Relying upon the same purported contingencies (APS's plan to self-perform or obtain a licensed subcontractor), APS asserts that the contracting officer failed to consider APS's ability to meet the proposed new CCD. Motion at 8-9. But this argument fails for the same reason—APS was obligated to have the ability to perform the contract itself or with a licensed subcontractor. Even if the new CCD is considered a unilateral action by the contracting officer, APS cannot condition its obligation to meet that date upon its other contractual obligations.

Finally, APS argues that our decision "suggests that APS had the option to object" to the contracting officer's direction to provide a schedule based upon the October 10, 2024, CCD. Motion at 11. APS argues that it had no choice but to comply because, if it had failed to comply, VA would have had a proper basis for terminating after issuance of the cure notice. In making this argument, APS has not identified the legal error in the Board's decision; instead, it appears that APS is quibbling with the language of the decision. APS also undercuts the argument about the contingent nature of its schedule. As APS acknowledges, APS was obligated to comply with the direction from the contracting officer because failure to do so would have provided a basis for termination. APS could neither object nor condition its obligation on other events. APS has not articulated a basis for reconsideration.

Decision

APS's motion for reconsideration is denied.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge