



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: August 1, 2007

CBCA 402-R

MITCHELL ENTERPRISES, LTD.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

William P. Weir, Fort Worth, TX, counsel for Appellant.

Catherine Crow and Dalton F. Phillips, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **DeGRAFF**.

DANIELS, Board Judge.

The Board denied an appeal by Mitchell Enterprises, Ltd. (Mitchell) which involved a claim by Mitchell under a contract with the General Services Administration (GSA) for construction of a new United States Courthouse in Laredo, Texas. *Mitchell Enterprises, Ltd. v. General Services Administration*, CBCA 402 (May 30, 2007). Mitchell now moves for reconsideration of that decision.

The parties agreed that the principal issue in the case was whether GSA's design for the building provided sufficient interstitial space to accommodate all of the building's systems. Interstitial space, as we explained, is the space between stories of a building. Systems include the building's heating, ventilation, and air conditioning (HVAC) system;

water, sewer, storm drain, and fire sprinkler piping; and electrical conduit and apparatus. *Mitchell*, slip op. at 2.

In the Laredo courthouse, each floor was concrete, supported by metal beams. Mitchell maintained that the interstitial space available for installation of the building's systems did not include the space between the beams. We disagreed with this position, basing our conclusion primarily on the language in the contract and secondarily on testimony of witnesses, a definition included in a document prepared by the Department of Veterans Affairs (VA), and a decision of the VA Board of Contract Appeals to which Mitchell called our attention. *Mitchell*, slip op. at 3-4.

Mitchell now asks us to reconsider our decision as to whether the space between the beams was interstitial space available for installation of systems. The contractor argues that language in the contract and a VA document showing "typical subzones" of space between a building's ceilings and floors mandate a different result from the one we reached. The document is not part of the record on which we decided the case. Its contents appear to be consistent with the designations of space made in the contract at issue in the case decided by the VA Board of Contract Appeals.

The argument Mitchell makes now is essentially the same one it made earlier. The contractor's reply brief in the case, for example, argued that based on contract language and the way in which the VA treats subzones of space between ceilings and floors, we should conclude that the space between the beams in the Laredo courthouse was not available for the installation of systems. Appellant's Reply Brief (CBCA 402) at 2-5. Arguments already made and reinterpretations of old evidence are not sufficient basis for requesting reconsideration, however. Rule 26(a) (72 Fed. Reg. 36,794, 36,805 (July 5, 2007)); *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, slip op. at 2 (June 29, 2007). Even if the reasoning in support of a motion for reconsideration is more sophisticated than the arguments previously made, reconsideration is inappropriate. *ROI Investments v. General Services Administration*, GSBCA 15488-C(15037-C)-REIN-R, 01-2 BCA ¶ 31,523, at 155,622. The document newly filed with the motion for reconsideration does not provide a basis for reconsideration because it could have been presented earlier; is cumulative of information previously submitted; and, because it expresses general views of an agency different from the one involved in this case rather than requirements of the contract at issue here, is not material to resolution of the case. *A.C. Nielsen Co. v. Defense Commissary Agency*, GSBCA 13466-P-R, et al., 97-1 BCA ¶ 28,774, at 143,595 (1996); *Adelaide Blomfield Management Co. v. General Services Administration*, GSBCA 11909-R, 94-3 BCA ¶ 27,158, at 135,336.

Decision

Consequently, appellant's **MOTION FOR RECONSIDERATION** is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

MARTHA H. DeGRAFF
Board Judge