



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: September 25, 2012

CBCA 1656-ISDA-R, 1657-ISDA-R

RAMAH NAVAJO SCHOOL BOARD, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Michael P. Gross of M.P. Gross Law Firm, P.C., Santa Fe, NM; and Daniel H. MacMeekin, Washington, DC, counsel for Appellant.

Jeffrey C. Nelson and Sabrina A. McCarthy, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **WALTERS**.

WALTERS, Board Judge.

Respondent, the Department of the Interior (DOI), filed a motion for reconsideration with the Board, asking that the Board reconsider and reverse its decision of October 25, 2011, which granted appellant, Ramah Navajo School Board, Inc. (RNSB), summary relief in its appeal. We found RNSB entitled to recover a total of \$96,205, plus Prompt Payment Act interest and CDA interest, by reason of DOI's improper reclassification and exclusion of construction material and supply expenses from the direct costs against which RNSB's indirect cost rate was to have been applied.

In terms of motions for reconsideration, the Board, in *Rafael Portillo v. General Services Administration*, CBCA 2516-R, 12-1 BCA ¶ 35,050, at 172,178-79, observed:

Board Rule 26 (48 CFR 6101.26 (2011)) provides that reconsideration may be granted for any of the reasons stated in Rule 27(a), which include, among other things, newly discovered evidence which could not have been earlier discovered through due diligence, fraud, misinterpretation, or other misconduct of an adverse party, or excusable mistake. Pursuant to our Rules, “[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration.” *Springcar Co. v. General Services Administration*, CBCA 1310-R, et al., 10-2 BCA ¶ 34,534, at 170,332; *see also Oregon Woods, Inc. v. Department of the Interior*, CBCA 1072-R, 09-1 BCA ¶ 34,063, *affd sub nom. Oregon Woods, Inc. v. Salazar*, 355 F. Appx 403 (Fed. Cir. 2009); *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784; *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618.

Reconsideration is not a vehicle for retrying a case or introducing arguments that have been made previously. *Ryll International, LLC v. Department of Transportation*, CBCA 1143-R[, 12-1 BCA ¶ 35,029]; *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Department of Health and Human Services*, CBCA 237-ISDA-R, 10-2 BCA ¶ 34,476, at 170,043. Whether to grant a request for reconsideration is wholly within the discretion of the Board. *Beyley*, 08-1 BCA at 167,203 (citing *Flathead Contractors, LLC v. Department of Agriculture*, CBCA 118-R, 07-2 BCA ¶ 33,688).

As appellant correctly surmises, DOI, in its motion, presents the Board with a number of arguments previously made and rejected and no new evidence that was unavailable at the time of our earlier decision. DOI now posits that the Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP) that RNSB has contracted to operate is a “service” program rather than a “construction” program and argues that RNSB’s construction expenses incurred in connection with the HIP, in particular the costs of construction materials and supplies, would not be “expenses of carrying out the contracted program itself,” thus implying that these expenses should not be burdened by the negotiated indirect cost rate. This contention makes no sense. If taken to its logical conclusion, DOI would seem to be saying that the indirect cost rate should be inapplicable to any HIP-related construction expenses RNSB incurred, including its construction labor costs, which have never been at issue.

DOI, in its reply brief, also places great reliance on deposition testimony of the Indirect Cost Coordinator at DOI’s National Business Center (NBC). The Board has reviewed her testimony and finds it confusing and muddled at best. Notwithstanding any contrary opinions that individual may have ventured as part of her deposition testimony,

under DOI agency guidance, NBC is charged with negotiating and approving indirect cost rates as part of an indirect cost rate (IDC) agreement, and a BIA awarding official is bound to apply those rates in a manner that is consistent with the previously negotiated IDC agreement. We determined that what the BIA awarding official did in the present case was inconsistent with the IDC agreement RNSB had negotiated with NBC. There is no basis for reversing our earlier decision.

Accordingly, the motion for reconsideration is **DENIED**.

RICHARD C. WALTERS
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JAMES L. STERN
Board Judge