



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: July 22, 2009

CBCA 449-R

NAVIGANT SATOTRAVEL,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

James H. Roberts, III and Carrol H. Kinsey, Jr. of Van Scoyoc Kelly PLLC, Washington, DC, counsel for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **HYATT**, and **KULLBERG**.

KULLBERG, Board Judge.

Appellant, Navigant SatoTravel (NST), moves for reconsideration of the Board's decision that denied its appeal as to the issue of entitlement.¹ *Navigant SatoTravel v.*

¹ The Board determined in a previous order that entitlement and quantum would be decided separately in this appeal. Board's Memorandum of Conference Call and Order (Mar. 8, 2007) at 3.

General Services Administration, CBCA 449, 09-1 BCA ¶ 34,098. In our decision, the Board denied NST's appeal of the determination by the General Services Administration's (GSA's) contracting officer that NST was required under its Federal Supply Schedule (FSS) contract² to remit to GSA Industrial Funding Fee (IFF) payments for certain transactions under order number W91QUZ-05-F-0005 (order), which was awarded to NST by the Army Contracting Agency-ITEC4 (DoD), for various travel-related services in Defense Travel Region 6 (DTR6). The Board rejected NST's argument that DoD's order was not subject to the requirement for remitting IFF payments to GSA. In so far as NST's motion for reconsideration only reiterates its argument that DoD was legally precluded from ordering DTR6 travel services under NST's FSS contract, and that argument was addressed in the Board's decision, we deny its motion for reconsideration.

This Board's rules set forth specific circumstances under which granting a motion for reconsideration of its decision is appropriate. "Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing." Rule 26(a) (48 CFR 6101.26(a) (2008)). In considering a party's motion for reconsideration, the Board will look to the following factors set forth under its rules:

The Board's Rule 26 explains that reconsideration 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 established 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. Consequently, reconsideration will not be granted when the moving party

² GSA awarded contract number GS-33F-0020-P, an FSS contract for various travel-related services, to NST on May 5, 2004. Appeal File, Exhibit 29 at 2.

“simply restates issues already considered and decided” *Michael C. Lam v. General Services Administration*, CBCA 1213-R, 09-1 BCA ¶ 34,105, at 168,643.

NST’s motion for reconsideration reiterates its earlier argument, which the Board addressed in its decision, that DoD was legally precluded from ordering DTR6 travel services under its FSS contract because the cost of contract line items (CLINs) 0013 and 0014 in DoD’s order for DTR6 travel services³ exceeded the micro-purchase limit for items not within the scope of NST’s FSS contract.⁴ Appellant’s Brief at 29 (citing *ATA Defense Industries, Inc. v. United States*, 38 Fed. Cl. 489 (1997), and *SMS Systems Maintenance Services, Inc.*, B-284550.2, 2000 CPD ¶ 127 (Aug. 4, 2000)). We declined to review the question of whether DoD had properly competed the order for DTR6 travel services by including CLINs 0013 and 0014 because this Board lacks jurisdiction over protests, and, consequently, we have no authority to change the rights and obligations of either NST or DoD under the terms of that order. *Navigant SatoTravel*, 09-1 BCA at 168,605 (citing *Innovative (PBX) Telephone Services, Inc. v. Department of Veterans Affairs*, CBCA 12, et al., 07-2 BCA ¶ 33,685, at 166,765). This Board has recognized that “[t]he [Contract Disputes Act] limits our jurisdiction to contracts between the Government and contractor.” *Innovative (PBX) Telephone Services, Inc.*, 07-2 BCA at 166,765 (citing 41 U.S.C. § 602 (2000)). A protest is not within this Board’s jurisdiction because “bid protests, by definition, involve disputes between the Government and a disappointed bidder.” *Id.* Consequently, “[t]he Board does not have jurisdiction to review an agency’s determination of its needs or method of fulfilling those needs.” *Id.*

In its motion, NST again requests that this Board apply the *SMS* and *ATA* decisions, which involved protests, to determine that DoD was legally precluded from issuing an order under NST’s FSS contract because the cost of CLINs 0013 and 0014 in DoD’s order exceeded the micro-purchase threshold, and GSA has no entitlement to IFF payments under those circumstances. Such an inquiry into the manner in which DoD competed the order is a matter related to the adjudication of a protest and outside the jurisdiction of this Board. Lacking the authority to make such an inquiry into the competition of the order for DTR6

³ CLINs 0013 and 0014 were for the global distribution system terminal and software, and the Government did not dispute that those CLINs were not within the scope of NST’s FSS contract. *Navigant SatoTravel*, 09-1 BCA at 168,602.

⁴ NST stated in its brief that CLINs 0013 and 0014 had a combined cost of \$3352 for the base and option periods of the order that exceeded both the micro-purchase level of \$2500 that was in effect at time of award and the current micro-purchase threshold of \$3000. Appellant’s Brief at 30.

travel services, we also lack the authority to implement any remedy that would alter the terms of the order for that reason.

Additionally, NST argues in its motion that the issue of whether DoD could properly include CLINs 0013 and 0014 in an order under NST's FSS contract is one of contract formation rather than an issue related to a protest, but that argument does not present us with a new rationale that would justify granting its motion for reconsideration. Our decision dealt at length with the issue as to whether DoD's order for DTR6 travel services was an order under NST's FSS contract, and we held that NST accepted the terms of the standard form (SF) 1449, which was an order under its FSS contract. *Navigant SatoTravel*, 09-1 BCA at 168,604. NST's attempt to use an alleged defect in the competition for that order as a means to change the terms of the SF 1449 is precluded by the fact that, as discussed above, we do not have the jurisdiction to make the inquiry as to whether the inclusion of CLINs 0013 and 0014 were improper nor do we have the authority to change the terms of that order simply because NST now challenges the manner in which DoD competed the order by including CLINs 0013 and 0014. Although it is possible that a protest could have been brought before the appropriate forum to challenge DoD's action, we are in no position to speculate as to how such a matter would have been resolved nor are we in a position to rewrite the terms of the order based upon such speculation.

Decision

The motion to reconsider is **DENIED**.

H. CHUCK KULLBERG
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

CATHERINE B. HYATT
Board Judge