



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR RECONSIDERATION DENIED: May 4, 2023

CBCA 7385-R

TRUE EXCELLENCE GROUP, LLC,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

John M. Manfredonia of Manfredonia Law Offices, LLC, Cresskill, NJ, counsel for Appellant.

Ekta Patel and Bruce M. James, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **SHERIDAN**, and **ZISCHKAU**.

**SHERIDAN**, Board Judge.

Appellant, True Excellence Group, LLC (TEG), seeks reconsideration of our decision dated March 7, 2023. TEG raises a single argument on reconsideration—that the Board applied the ten-tent minimum to the base period only and did not apply the minimum to each of the option periods exercised under the indefinite-delivery, indefinite-quantity (IDIQ) contract. We deny TEG’s motion.

### Background

As discussed in our previous decision in this appeal, *True Excellence Group, LLC v. Department of Homeland Security*, CBCA 7385, 23-1 BCA ¶ 38,299, FEMA awarded TEG an IDIQ contract on January 27, 2020, to provide Mobile Disaster Recovery Centers (MDRCs) for delivery of FEMA’s disaster relief services to survivors of an earthquake in Puerto Rico. The initial period of performance under the contract was six months, with three one-month option periods (the IDIQ options).

On April 22, 2022, TEG filed a notice of appeal with the Board. TEG alleged in its appeal the following: (1) that FEMA had failed to meet the guaranteed minimum under the contract, (2) that FEMA breached the contract by not paying for costs associated with the task order options, (3) that FEMA failed to disclose superior knowledge, (4) that FEMA breached the implied duty of good faith and fair dealing, and (5) that FEMA violated the Small Business Act, 15 U.S.C. § 632 (2018), and the Prompt Payment Act, 31 U.S.C. § 3903.

FEMA moved to dismiss the appeal on two primary grounds: (1) that the Board lacked jurisdiction over TEG’s claim regarding the guaranteed minimum and (2) that TEG failed to state a claim for breach of contract upon which relief may be granted with regard to TEG’s remaining claims.

In its decision, the Board found that (1) we lacked jurisdiction over TEG’s mandatory minimum claim, (2) the contract was a proper IDIQ contract where the mandatory minimum was contained in the statement of work (SOW), (3) FEMA’s exercise of the IDIQ options did not effectively cause the exercise of the task order options, and (4) appellant had failed to state a claim for breach of contract upon which relief may be granted.

On March 28, 2023, appellant timely filed a motion for reconsideration consistent with Board Rule 26(c) (48 CFR 6101.26(c) (2021)).

### Discussion

“A motion for reconsideration must be based on the acquisition of newly discovered evidence or the 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) (quoting *Sims Paving Corp.*, DOT BCA 1822, 91-2 BCA ¶ 23,733, at 118,868).

Appellant’s claim submitted to the contracting officer sought payment of the firm-fixed, not-to-exceed values of nine task orders on the basis that an exercise of an option under the IDIQ contract extended each of the task orders issued during the base period. In our decision, we found this to be contrary to the law regarding the exercise of option periods.

Now, on reconsideration, appellant's claim of error is that the Board applied the ten-tent minimum to the base period only and did not apply that minimum to each of the option periods exercised under the IDIQ contract.

Appellant misunderstands our original decision. While we found in our original decision that the SOW created the mandatory minimum required for a proper IDIQ contract, we did not (and do not now) decide whether or not the contract created separate, enforceable minimums for each of the option periods.<sup>1</sup>

Ultimately, we lack jurisdiction over this claim by appellant. We have already dismissed appellant's claim regarding whether FEMA met the mandatory minimum under the base contract for a failure to present it to the contracting officer. *True Excellence*, 23-1 BCA at 185,949. Here, appellant's claim that FEMA failed to meet required minimums under the options comes to the same result. The first time appellant raised this claim was in its proposed amended complaint in this appeal. Proposed Amended Complaint ¶¶ 59, 64, 68. This claim was not presented to the contracting officer for a final decision, and, therefore, we do not have jurisdiction to entertain it. See *Primestar Construction v. Department of Homeland Security*, CBCA 5510, 17-1 BCA ¶ 36,612, at 178,329-30 (2016).

Lacking jurisdiction over the claim, we, therefore, did not address it. This is not a basis for reconsideration.

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<sup>1</sup> Respondent is correct in its opposition to the present motion that IDIQ option periods are not required to have independent minimums and that a proper mandatory minimum does not automatically carry over to each option period. *Varilease Technology Group, Inc. v. United States*, 289 F.3d 795, 799-800 (Fed. Cir. 2002). However, *Varilease* does not hold that an option period may not have a required minimum quantity if that quantity is clearly specified in the contract. See *id.* at 800 (agreeing with the Armed Services Board of Contract Appeals' analysis in *Five Star Electronics, Inc.*, ASBCA 44984, 96-2 BCA ¶ 28,421, at 141,957 (“[T]here are no minimum quantities specified for any of the option periods. This consideration differentiates the cases that the appellant relies upon, where there were minimum requirements for the option periods.”)). We have not decided, and do not here decide, whether the contract at issue in these appeals specified minimums for the IDIQ options.

Decision

Appellant's motion for reconsideration is **DENIED**.

*Patricia J. Sheridan*  
PATRICIA J. SHERIDAN  
Board Judge

We concur:

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge

*Jonathan D. Zischkau*  
JONATHAN D. ZISCHKAU  
Board Judge