ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -	)	
	)	
Watts Constructors, LLC	)	ASBCA No. 63753
	)	
Under Contract No. W91238-14-C-0040	)	

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OPINION BY ADMINISTRATIVE JUDGE SWEET
ON APPELLANT'S MOTION FOR RECONSIDERATION

On October 21, 2025, the appellant Watts Constructors, LLC (Watts) filed a motion (Motion) to reconsider our September 25, 2025 decision (Decision), which, *inter alia*, granted the government summary judgment on Watts' Delay to

Modification No. R00004 Issuance claim (Claim).[1] *Watts Constructors*, ASBCA No. 63753, 25-1 BCA ¶ 38,938.

Motions for reconsideration are only appropriate if they are based upon newly discovered evidence, mistakes in the findings of fact, or errors of law. *Green Valley Co.*, ASBCA No. 61275, 18-1 BCA ¶ 37,044 at 180,330 (citing *Alliance Roofing & Sheet Metal, Inc.*, ASBCA No. 59663, 15-1 BCA ¶ 36,063). "Reconsideration is not intended to provide a party with the opportunity to reargue its position." *Id.* (quoting *Robinson Quality Constructors*, ASBCA No. 55784, 09-2 BCA ¶ 34,171 at 168,911). Thus, "[m]otions for reconsideration do not afford litigants the opportunity to take a 'second bite at the apple' or to advance arguments that properly should have been presented in an earlier proceeding." *Dixon v. Shinseki*, 741 F.3d 1367, 1378 (Fed. Cir. 2014) (citations and quotations omitted). As a result, in our discretion, we may find that arguments not raised in an opening brief have been waived. *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 800 (Fed. Cir. 1990). Here, we deny the Motion because, as discussed below, it reargues Watts' positions; raises arguments that Watts should have presented earlier; and/or does not establish that there is newly discovered evidence, mistakes in the findings of fact, or errors of law.[2]

I. Watts' Arguments that the Decision Misapplied FAR 33.201 and Controlling Precedent Are Reargument, Waived Argument, and/or Meritless

Watts' arguments that the Decision misapplied Federal Acquisition Regulation (FAR) 33.201 and controlling precedent are reargument, waived argument, and/or meritless. Watts first argues that the delays to the Project were inherently unknowable in the fall of 2015 because that effect was contingent upon the issuance of Modification No. R00004 (app. mot. at 11-12). However, that merely reargues the position that Watts took in its opposition to the government's summary judgment motion (Opposition) (app. SJ opp'n at 15 ("[t]he delays and impacts associated with the addition of the [Equipment] were not known (or reasonably knowable) until, at earliest, 06 July 2016 when [the government] issued Modification No. R00004 adding the [Equipment] to Watts' Contract.")). Thus, Watts improperly seeks to use the Motion to take a second bite at the apple. *See Dixon*, 741 F.3d at 1378.

[1] We presume familiarity with the Decision.

[2] As Watts correctly notes, the Decision mistakenly stated that the Claim accrual date was "September or October of 2016" instead of "September or October of 2015" (app. mot. at 25-26 (citing *Watts*, 25-1 BCA ¶ 38,938 at 189,513)). However, that was a clerical mistake, or a mistake arising from oversight or omission. Therefore, we correct that mistake pursuant to Federal Rule of Civil Procedure (FED. R. CIV. P.) 60(a).

In any event, that argument is meritless. As the Decision correctly held in rejecting that argument the first time:

> [T]hat argument ignores the nature of Watts' Delay to Modification No. R00004 Issuance claim. . . . [T]he legal basis for the Delay to Modification No. R00004 Issuance claim is not that Watts' fulfilling its new duty to provide the Equipment pursuant to Modification No. R00004 after July 6, 2016 caused delay. . . . Rather, the legal basis for the Delay to Modification No. R00004 Issuance claim is that delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information adversely impacted construction from when Watts was ready to start the Ops Building foundation on September 23, 2015, until the government issued Modification No. R00004 on July 6, 2016 (SOF ¶ 16). As discussed above, Watts knew, or should have known, of all the events necessary to fix the alleged liability for that claim when the delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment began delaying the Ops Building foundation work in September or October of 2015.

Watts, 25-1 BCA ¶ 38,938 at 189,514.

Second, Watts argues that the Decision misapplied FAR 33.201 and controlling precedent because its reliance upon "pre-modification forecasts" (Pre-Modification Documents)[3] skipped the first FAR 33.201 analysis step of analyzing when all of the events fixing liability had occurred (app. mot. at 15-19). Again, that improperly seeks to take a second bite at the apple by rearguing the position that Watts took in its Opposition that the Pre-Modification Documents did not establish that the Claim

[3] While Watts is unclear about precisely what it means by "pre-modification forecasts," (app. mot. at 15-19), and the only specific document it cites is the October 30, 2015 cost proposal (*id.* at 15), we understand Watts' use of the term "pre-modification forecasts" to mean the September 30, 2015 schedule narrative report, the October 28, 2015 meeting, and/or the October 30, 2015 letter because those are the pre-modification documents upon which the Decision relied. *See Watts*, 25-1 BCA ¶ 38,938 at 189,513. Moreover, we avoid Watts characterization of those documents as "forecasts" because, as discussed above Watts' characterization of them as mere forecasts is inaccurate.

accrued in September or October of 2015 (app. SJ opp'n at 10-11, 13-14; app. resp. stmt. undisputed material fact ¶¶ 17-19); *see also Dixon*, 741 F.3d at 1378.

In any event, that argument is meritless because it overstates the Decision's use of the Pre-Modification Documents and understates the content of the Pre-Modification Documents. Contrary to Watts' assertion, the Decision analyzed when all of the events fixing liability for the Claim had occurred under the first FAR 33.201 analysis step, stating that:

> Here, Watts' Delay to Modification No. R00004 Issuance claim is that the government's alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information adversely impacted the start of the critical-path foundation rebar activity in OPS Building Area B from September 23, 2015 to July 6, 2015 (SOF ¶ 16). Thus, the events that fixed the government's alleged liability and permitted the assertion of the claim were the government's alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information, adversely impacting the start of critical-path foundation rebar activity in OPS Building Area B. According to the Claim and the [Time Impact Analysis (TIA)], the government's delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information began adversely impacting the critical path foundation rebar activity in the Ops Building Area B by September 2015 (*id.*).

Watts, 25-1 BCA ¶ 38,938 at 189,513 (emphasis added). Then, under the second FAR 33.201 analysis step, the Decision held that Watts knew, or should have known, of those events fixing the government's alleged liability by September or October of 2015 because there was no evidence suggesting that the government concealed that purported delay or its purported impact upon the critical-path, and there was no evidence that those purported facts were inherently unknowable at the time. *Id.*

Only then did the Decision rely upon the Pre-Modification Documents as an alternative basis for finding that Watts knew, or should have known, of the events

fixing the government's alleged liability by September or October of 2015 under the second FAR 33.201 analysis step. *Id.* As the Decision stated:

> On the contrary, the undisputed evidence shows that Watts demonstrated its awareness of the fact that the alleged delay obtaining the Equipment and the supporting submittal information was delaying construction by notifying the government in the September 30, 2015 schedule narrative report that the "drop dead date for submittal information" had passed (SOF ¶ 8). Further, at an October 28, 2015 meeting, "Watts again notified the Government that the UPS/Switchgear supplier will not release any shop drawings or information without a Purchase Order. Without approved show drawings Helix is unable to install the electric conduits for the gear, which impacts installation of plumbing, concrete footings and slab work." (SOF ¶ 9). Moreover, in the October 30, 2015 letter, Watts notified the government that, "[t]he conduit installation within quadrant 'B' of the SATCOM building is the current delay . . . ." (*id.* (emphasis added)). Indeed, in the TIA, Watts acknowledged that, while the full extent of delay was unknown on September 20, 2015, "it was clear that United States Army Corps of Engineers (USACE) had extended the overall required duration for the Ops Building because of [the] lack of information needed by Watts to perform its critical path work." (SOF ¶ 15).

Id. (emphasis, omissions, and modifications in original).[4] That holding was appropriate because the Pre-Modification Documents were not mere "forecasts," but

[4] In a footnote, Watts criticizes the Decision for relying upon its TIA (app. mot. at 15 n.7). However, as the Decision correctly recognized, "'[t]o determine when the alleged liability was fixed, we begin by examining the legal basis of the particular claim'" *Watts*, 25-1 BCA ¶ 38,938 at 189,514 (quoting *Hanley Indus., Inc.*, ASBCA No. 58198, 14-1 BCA ¶ 35,500 at 174,016). Here, Watts relied upon the TIA to state the basis for its claim by attaching the TIA to the claim (R4, tab 9 at 11-103), and stating in the claim that "Watts' Claim is supported by the Time Impact/Schedule Delay Analysis ('TIA')" (*id.* at 1). Because the TIA established the basis for the Claim, the Decision properly relied upon the TIA.

also expressly stated Watts' current knowledge in September and October of 2015, that the governments' alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information was adversely impacting the start of the critical-path foundation rebar activity in Operations (OPS) Building Area B. *Id.*

Third, Watts argues that our holding that the Claim accrued prior to the issuance of Modification No. R00004 is inconsistent with our holding that the Submittals and Procurement Delay claim did not accrue until the issuance of Modification No. R00004 (app. mot. at 16). However, as the Decision correctly recognized, "'the statute of limitations runs against each distinct liability-creating event having its own associated damages.'" *Watts*, 25-1 BCA ¶ 38,938 at 189,514 (quoting *Patricia I. Romero, Inc. d/b/a Pacific Builders*, ASBCA No. 63093, 23-1 BCA ¶ 38,362 at 186,289). Thus, as the Decision correctly held:

> [T]he legal basis for the Delay to Modification No. R00004 Issuance claim is not that Watts' fulfilling its new duty to provide the Equipment pursuant to Modification No. R00004 after July 6, 2016 caused delay. That is the legal basis for the Submittals and Procurement Delay claim discussed below (SOF ¶ 17). Rather, the legal basis for the Delay to Modification No. R00004 Issuance claim is that delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information adversely impacted construction from when Watts was ready to start the OPS Building foundation on September 23, 2015, until the government issued Modification No. R00004 on July 6, 2016 (SOF ¶ 16).

Id. The Decision correctly held that, due to those different legal bases, the Claim and the Submittals and Procurement Delay claim had different accrual dates. *Id.* at 189,512-15.

Fourth, Watts argues that the Decision misapplied controlling precedent because the Claim is a "modification-issuance delay" claim—instead of a government furnished equipment delay claim—and the liability-fixing events for such claims are the government actions that committed the parties to the changed approach and addressed the amount of delay under *Lockheed Martin Aeronautics Co.*, ASBCA No. 62209, 22-1 BCA ¶ 38,112 and *Patricia I. Romero*, 23-1 BCA ¶ 38,362 (app. mot. at 11, 19-20). Watts waived that argument because it properly should have raised—

but did not raise—it in the Opposition (*see* app. SJ opp'n), and a motion for reconsideration does not afford Watts the opportunity to advance that argument. *See Dixon*, 741 F.3d at 1378; *Becton Dickinson*, 922 F.2d at 800.

In any event, the argument fails factually and legally. Factually, the Claim here is not purely a "modification-issuance delay" claim because, as the Decision correctly held, the delay was the government's alleged failure to either modify the Contract to require Watts to procure the Equipment and supporting submittal information—or provide that Equipment and supporting submittal information as required by the original Contract—on a timely basis. *Watts*, 25-1 BCA ¶ 38,938 at 189,509-11 (citing R4, tab 19 at 1-2, 5; app. supp. R4, tab 189 at 76-77; ASUMF ¶ 35). Thus, the delay addressed in the Claim involved aspects of both modification-issuance delay and government furnished equipment delay. Legally, *Lockheed Martin* and *Patricia I. Romero* did not involve a claim that the government's delay in issuing a modification delayed a project; let alone hold that the liability-fixing events for a "modification-issuance delay theory" are the government actions that committed the parties to the changed approach and addressed the amount of delay. *Lockheed Martin Aeronautics Co.*, ASBCA No. 62209, 22-1 BCA ¶ 38,112; *Patricia I. Romero*, 23-1 BCA ¶ 38,362. Indeed, as Watts concedes, "the issues before the Board in *Romero* were entirely distinct from those raised here" (app. mot. at 18).

II. Watts' New Evidence Argument Is Meritless

Watts' argument that new evidence—namely government emails and internal documents, and deposition testimony—regarding the delay in issuing Modification No. R00004 raises genuine issues of material fact as to when the Claim accrued is meritless (app. mot. at 2-3, 12-14, 20-22). As an initial matter, Watts has failed to show that the government emails and internal documents are new evidence (*id.*). On the contrary, the government submits evidence with its opposition to the Motion showing that it produced its emails and documents on April 17, 2025 (gov't reconsideration opp'n, ex. 1), which was before Watts submitted its Opposition on May 5, 2025 (app. SJ opp'n at 26). Watts did not submit a reply brief contradicting that evidence.

In any event, the purportedly new evidence regarding the delay in issuing Modification No. R00004 does not raise a genuine issue of material fact as to when the Claim accrued because, as discussed above, the Claim accrued when Watts knew, or should have known, that the government's alleged delay in either delivering—or modifying the Contract to require Watts to procure—the Equipment and the supporting submittal information was adversely impacting the start of the critical-path foundation rebar activity in OPS Building Area B; not when the government issued

Modification No. R00004. *Watts*, 25-1 BCA ¶ 38,938 at 189,513-14. Thus, the purportedly new documents regarding the delay issuing Modification No. R00004 are not relevant to determining the Claim accrual date.

III. Watts' Waived its Continuing Claim Argument, and Has Failed To Show That That Argument Has Merit

Watts waived its argument that we should reconsider the dismissal of the last 26 days—between June 10, 2016 and July 6, 2016—of the Claim because those days fall within the statute of limitations period under a continuing claim theory (app. mot. at 3, 24-25). However, Watts properly should have presented—but did not present—a continuing claim theory in the Opposition (*see* app. opp'n SJ). Therefore, Watts waived that argument, and a motion for reconsideration does not afford Watts the opportunity to advance that argument. *See Dixon*, 741 F.3d at 1378; *Becton Dickinson*, 922 F.2d at 800.

In any event, Watts has failed to show that its argument has merit because it did not submit a reply brief in response to the government's argument in its opposition to the Motion that the Motion provides no basis to support Watts' implied position that the Board should treat each individual day as a new, distinct, liability-creating event (gov't reconsideration opp'n 16-17).

CONCLUSION

For the reasons discussed above, the motion for reconsideration is denied. However, under FED. R. CIV. P. 60(a), we amend the statement that the Claim accrual date was "September or October of 2016," *Watts*, 25-1 BCA ¶ 38,938 at 189,515, to state that the Claim accrual date was "September or October of 2015."

Dated: January 15, 2026

James R. Sweet

JAMES R. SWEET
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

J. REID PROUTY
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 63753, Appeal of Watts Constructors, LLC, rendered in conformance with the Board's Charter.

Dated: January 16, 2026

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals