

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -)
)
North Wind Construction Services, LLC) ASBCA Nos. 63641, 63642, 63733
) 63750, 63751, 63759
) 63760, 63761, 63762
)
Under Contract No. W91237-21-C-0003)

APPEARANCES FOR THE APPELLANT:

Dana W. Lang, Esq.
Womble Bond Dickinson (US) LLP
Charleston, SC

Joshua A. Mullen, Esq.
Joshua R. Funderburke, Esq.
Womble Bond Dickinson (US) LLP
Nashville, TN

Stephen J. McBrady, Esq.
Skye Mathieson, Esq.
John Nakoneczny, Esq.
Crowell and Moring LLP
Washington, DC

APPEARANCES FOR THE GOVERNMENT:

Michael P. Goodman, Esq.
Engineer Chief Trial Attorney
Matt D. Coakley, Esq.
Joshua J. McCarroll, Esq.
Jack D. Myers, Esq.
Engineer Trial Attorneys
U.S. Army Engineer District, Huntington

Bonnie B. Jagoditz, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Nashville

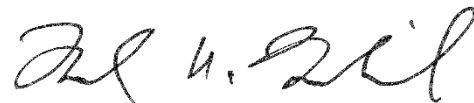
OPINION BY ADMINISTRATIVE JUDGE MELNICK DENYING THE
GOVERNMENT’S MOTION FOR RECONSIDERATION OF THE BOARD’S
APRIL 3, 2024, DECISION DENYING THE GOVERNMENT’S MOTION TO
DISMISS ASBCA NOS. 63760 AND 63761, AND DENYING THE
GOVERNMENT’S REQUEST FOR SENIOR DECIDING GROUP
CONSIDERATION

The government seeks reconsideration of the Board’s April 3, 2024, decision denying the government’s motion to dismiss ASBCA Nos. 63760 and 63761. Motions for reconsideration do not “provide a party an opportunity to reargue issues that were previously raised and decided.” *John C. Grimberg Co.*, ASBCA Nos. 58791, 59717, 19-1 BCA ¶ 37,227 at 181,211 (citing *Precision Standard, Inc.*, ASBCA No. 58135, 16-1 BCA ¶ 36,504 at 177,860). Nor do they allow a “second bite at the apple” or an “opportunity to advance arguments that properly should have been presented in an earlier proceeding.” *Id.* (citing *Dixon v. Shinseki*, 741 F.3d 1367, 1378 (Fed. Cir. 2014)).* Motions for reconsideration are granted “if we have made a genuine oversight that affects the outcome.” *Id.* (quoting *Relyant, LLC*, ASBCA No. 59809, 18-1 BCA ¶ 37,146 at 180,841). The government reargues some points already considered by the Board, raises new arguments it could have previously advanced but did not, and substitutes prior concessions and contentions of law with new ones that it now prefers. But mostly, it does not persuade us that we have committed an oversight that affects the outcome of the motion. Accordingly, the government’s motion is denied.

The government seeks referral of its motion to the Board’s Senior Deciding Group to overturn *Fru-Con Construction Corp.*, ASBCA No. 53544, 02-1 BCA ¶ 31,729, and decisions following that precedent. Requests that an appeal be referred to the Board’s Senior Deciding Group are governed by the Board’s Rules and Charter. ASBCA Rules, Preface § II(c); ASBCA Charter, 48 C.F.R., ch. 2, app’x A, pt.1 § 3. The Chairman has considered the government’s request pursuant to those provisions and denies it.

Dated: July 2, 2024

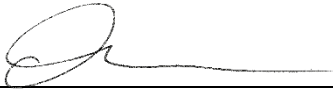
(Signatures continued)



MARK A. MELNICK
Administrative Judge
Armed Services Board
of Contract Appeals

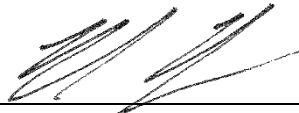
* To be sure, new subject matter jurisdictional challenges may be raised at any point in litigation, *see, e.g., Henderson v. Shinseki*, 562 U.S. 428, 434-45 (2011), but the motion before us here is one seeking reconsideration of a particular motion already denied and we apply our normal standard of review.

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 Nos. 63641, 63642, 63733, 63750, 63751, 63759, 63760, 63761, 63762, Appeals of North Wind Construction Services, LLC, rendered in conformance with the Board's Charter.

Dated: July 3, 2024



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