

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Golden Build Company) ASBCA No. 62294
)
Under Contract No. W91B4M-09-P-7340)

APPEARANCE FOR THE APPELLANT: Mr. Mahmood Nezam
Chief Executive Officer

APPEARANCES FOR THE GOVERNMENT: Scott N. Flesch, Esq.
Army Chief Trial Attorney
LTC Stephen M. Hernandez, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PAUL ON APPELLANT’S
MOTION FOR RECONSIDERATION

Appellant, Golden Build Co. (GBC), has filed a motion for reconsideration of our July 9, 2020, decision granting the Army’s motion for dismissal based on lack of jurisdiction. GBC has not satisfied the requirements of Board Rule 20, so we deny the motion.

FINDINGS OF FACT

1. On September 15, 2009, the Army and GBC entered into Contract No. W91B4M-09-P-7340 for operations and maintenance of the Afghan National Army Forward Operating Base, Sheberghan (R4, tab 1 at 1-2, tab 2 at 1). Less than a month later, on October 5, 2009, the contracting officer (CO) executed Modification No. P00001 which removed the possibility of issuing contract options (R4, tab 5).

2. On January 22, 2010, the CO notified GBC “there [was] nothing at the location for you to do. This is because no men are there for you to support” (R4, tab 6). On August 26, 2010, the CO executed Modification No. P00003, which decreased the contractual amount from \$117,906* to \$617. GBC signed this the next day. (R4, tabs 8-9)

3. GBC filed a notice of appeal with the Board on December 4, 2019. The government filed a motion to dismiss for lack of jurisdiction, to which GBC did not file a substantive response. We granted the motion on July 9, 2020. In that decision, we found that there was no evidence demonstrating that the CO ever received a claim regarding the

* Our original decision incorrectly identified the contract amount as \$119,906.

contract, and thus the CO never issued a final decision. *Golden Build Co.*, ASBCA No. 62294, 20-1 BCA ¶ 37,649 at 182,774. We then held that “[i]t is axiomatic that, in order for this Board to review an appeal under the [Contract Disputes Act], there must be an underlying claim. Here, no such claim [exists]. Therefore, we must grant the government’s motion to dismiss for lack of jurisdiction.” *Id.*

4. There is no evidence demonstrating that the CO ever received a claim regarding this unperformed contract, and thus the CO never issued a final decision. *Golden Build Co.*, ASBCA No. 62294, 20-1 BCA ¶ 37,649 at 182,774.

5. Appellant responded to the Board with three emails discussing the decision. The first, dated July 9, 2020, disputes the declaration by the contracting officer supporting the government’s original motion, discusses the case further, and finishes with “I am once again requesting to BOARD please review the documents and make fair decision we already submitted the proofs and evidence and we want justice” (syntax in original). The second email, dated July 18, 2020, states “the BOARD mentioned that not submit more evidence which evidence BOARD asking we submitted all required documents and it was not our fault” The third email, sent July 19, 2020, opens with “[t]his decision that you made is not fair” and then reviews the timeline of the dispute.

6. We requested clarification of appellant’s intentions in an Order dated July 20, 2020, and pointed appellant to Board Rule 20, Motion for Reconsideration. Appellant’s response, via email dated July 21, 2020, stated in its entirety: “Sirs, pleas see the bellow pdf attachments, these are the documents and evidences that were registered in my company office And I had already sent you a number of documents and bridges that were not mentioned again” (syntax in original). While no attachments were included, appellant sent two more emails with additional documentation, with brief annotations by appellant.

DECISION

The party moving for reconsideration “must demonstrate a compelling reason for the Board to modify its decision. . . . [In doing so] we look to whether there is newly discovered evidence or whether there were mistakes in the decision’s findings of fact, or errors of law.” *Bruce E. Zoeller*, ASBCA No. 56578, 14-1 BCA ¶ 35,803 at 175,103 (citing *J.F. Taylor, Inc.*, ASBCA Nos. 56105, 56322, 12-2 BCA ¶ 35,125). Under Board Rule 20, any motion for reconsideration “shall set forth specifically the grounds relied upon to grant the motion.” We have repeatedly held that, in the absence of specificity of the assertions upon which the motion is based, a motion for reconsideration does not satisfy the requirements of Rule 20. *E.g.*, *A.A.K.C.C.*, ASBCA No. 60399, 19-1 BCA ¶ 37,381 at 181,723; *Anis Avasta Constr. Co.*, ASBCA No. 61107, 18-1 BCA ¶ 37,060 at 180,408; *Envtl. Safety Consultants, Inc.*, ASBCA No. 54615, 07-2 BCA ¶ 33,613 at 166,457. Reconsideration motions that do not specifically allege the grounds upon


which they are based are denied for failure to comply with Board rules. *See, e.g., Taj Al Rajaa Co.*, ASBCA No. 58801, 14-1 BCA ¶ 35,555 at 174,229; *Sw. Marine, Inc.*, ASBCA No. 33208, 89-1 BCA ¶ 21,197 at 106,972.

None of the documents appellant submitted in response to our Order is a claim for the disputed amount timely sent to a CO, which is required for us to find jurisdiction. Appellant's filings do not allege a specific basis for us to reconsider our prior decision other than it finds that decision unfair. Appellant's motion thus does not satisfy Board Rule 20 and must be denied.

CONCLUSION

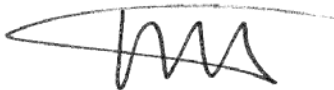
Golden Build's motion for reconsideration is denied.

Dated: November 18, 2020



MICHAEL T. PAUL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



RICHARD SHACKLEFORD
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
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. 62294, Appeal of Golden Build Company, rendered in conformance with the Board's Charter.

Dated: November 18, 2020



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