

S & T ENTERPRISES,)	AGBCA No. 2003-176-R
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Thomas Grajkowski, pro se)	
S & T Enterprises)	
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)	
Representing the Government:)	
)	
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RULING ON APPELLANT'S MOTION FOR RECONSIDERATION

October 2, 2003

Before POLLACK, VERGILIO and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK. Separate opinions by Administrative Judge VERGILIO concurring and by Administrative Judge POLLACK concurring in part and dissenting in part.

Appellant has filed a timely Motion for Reconsideration of the Board's decision, S & T Enterprises, AGBCA No. 2001-159-1, 03-2 BCA ¶ 32,282, denying in part its appeal of a Contracting Officer's (CO's) decision denying its claim for an equitable adjustment under Contract No. 50-04N7-0-24 for repairs to the Squaw Lake Dam Spillway in the Applegate Ranger District, Rogue River National Forest, Jackson County, Oregon.

In the motion, Appellant submits arguments made, or which could have made, at the original hearing in this matter and/or in post-hearing briefs. Subsequent to the motion, Appellant submitted a letter addressed to the Board and Government counsel seeking intervention with his bank to allow access to the funds deposited by the Forest Service (FS) in payment for the amount found due in the Board's

June 11, 2003 decision. The FS reply to the motion recites that the check was cashed. This matter is outside the issues before the Board. However, the Board assumes that the parties will cooperate with one another to ascertain what has happened and to insure payment to Appellant if such can be done without double payment by the FS. Appellant's letter also raises yet again the contention that Appellant was not paid for all shotcrete placed for reasons other than remedial work. Appellant seeks assurance that the Board made its own calculations and did not rely solely on those presented by the CO or his representative. As reflected in Findings of Fact (FF) Nos. 15-18 of the first of the Board's three opinions, the Board made its own calculation. Appellant's confusion appears to derive from the fact that he refers to the modifications rather than to the progress payment reports in making his own calculations.

Reconsideration is discretionary with the Board and will not be granted in the absence of compelling reasons, *i.e.*, clear error of fact or law, or newly discovered evidence that could not have been discovered at the time of the original proceeding. Reconsideration is not intended to permit a party to reargue its position or to present additional arguments that could have been presented originally. John Blood, AGBCA No. 2002-114-R, 02-1 BCA ¶ 31,830; Housatonic Valley Construction Co., Inc., AGBCA No. 2000-150-R, 00-2 BCA ¶ 31,043; Thomas B. Prescott, AGBCA No. 2000-108-R, 00-1 BCA ¶ 30,722; Timber Rock Reforestation, AGBCA No. 97-194-R, 98-1 BCA ¶ 29,360; Rain and Hail Insurance Service, Inc., AGBCA No. 97-180-R, 97-2 BCA ¶ 29,121; White Buffalo Construction, Inc., AGBCA No. 95-221-R, 96-1 BCA ¶ 28,050.

Appellant has not raised a basis meriting reconsideration. RR & VO, L.L.C., AGBCA No. 1999-178-R, 99-2 BCA ¶ 30,526; Raji Abdus-Salaam, AGBCA No. 99-147-R, 99-1 BCA ¶ 30,309.

RULING

Accordingly, the Board denies the Appellant's Motion seeking reconsideration.

ANNE W. WESTBROOK
Administrative Judge

Opinion by Administrative Judge VERGILIO, concurring.

In requesting reconsideration, the contractor alleges that there are inconsistencies in the opinion by the presiding judge, and it reasserts or asserts matters which were or were not (but could have been) before the Board. Without identifying any error by the Board, the contractor also notes its own inability to reconcile its payments received (despite the explanation in the opinion of the presiding judge, findings 16-18, and in my material fact 27). The requested reconsideration is not pertinent to the material facts and analysis or the result I reached in a separate opinion, S&T Enterprises, 03-2 BCA ¶ 32,282. Regarding the contractor's receipt of payment for the amount awarded pursuant to the Board decision, and its need for further Government action in writing to the bank, at present there is neither an indication that the Government will not take the requested action nor a dispute for the Board to consider.

I concur with the conclusion that the contractor has not raised a sufficient basis to support Board reconsideration. A motion for reconsideration should not be a routine submission for the party that did not prevail.

JOSEPH A. VERGILIO

Administrative Judge

Opinion by Administrative Judge POLLACK, concurring in part, dissenting in part.

For the reasons stated in my concurrence in part and dissent in part of the original board decision, I would grant Appellant's Motion as to payment for an additional \$2,980.10 under the VEQ clause. As to the remainder of Appellant's Motion, I concur in the denial.

HOWARD A. POLLACK

Administrative Judge

Issued at Washington, D.C.

October 2, 2003