

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

MOTION FOR RECONSIDERATION DENIED: April 3, 2003

GSBCA 15698-R

TOM AND TONY'S AUTO WRECKER SERVICE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Sam Zalman Gdanski, Suffern, NY, counsel for Appellant.

Kelly A. Gillin, Office of General Counsel, General Services Administration,
Washington, DC, counsel for Respondent.

Before Board Judges **PARKER**, **NEILL**, and **HYATT**.

PARKER, Board Judge.

Tom and Tony's Auto Wrecker Service moves the Board to reconsider its decision dismissing the company's appeal for lack of jurisdiction. In the appeal, Tom and Tony's alleged that the General Services Administration (GSA) breached an implied contract by telling Government agencies in the Fort Campbell, Kentucky, area not to use Tom and Tony's for their auto repair work. The Board held that Tom and Tony's was simply an open market source for such repair work and that no contract existed on which Tom and Tony's could base its claim of breach. Tom and Tony's Auto Wrecker Service v. General Services Administration, GSBCA 15698 (Jan. 28, 2003).

Discussion

Tom and Tony's asks the Board to reconsider its decision on two bases: (1) the Board's decision was incorrect as a matter of law; and (2) newly acquired evidence merits reconsideration. With regard to the first basis, it is well-established that the Board does not grant reconsideration on the basis of arguments already made and reinterpretations of old evidence. Rule 132(a) (48 CFR 6101.32(a) (2002)); Gilroy-Sims & Associates, GSBCA 8720-R, 8721-R, 8722-R, 8839-R, 8840-R, 88-3 BCA ¶ 21,085; Federal Systems Group,

Inc., GSBCA 9394-P-R, 88-3 BCA ¶ 20,968; Control Data Corp., GSBCA 8880-P-R, 87-3 BCA ¶ 20,071; Memorex Corp., GSBCA 7927-P-R, 85-3 BCA ¶ 18,327. We carefully considered Tom and Tony's arguments in connection with our original decision, and we are no more persuaded by them now than we were initially.

In support of its second asserted ground for reconsideration, Tom and Tony's has submitted a document which purports to be a memorandum from a Fort Campbell Motor Officer to Fort Campbell ambulance drivers regarding wrecker service for disabled vehicles. The memorandum states that GSA fleet vehicles are provided with wrecker service under "GSA contract agreement" with several local vendors. The memo goes on to list the vendors, but Tom and Tony's is not among them.

The Board's rules allow the Board to reconsider a decision due to "newly discovered evidence which could not have been earlier discovered, even through due diligence." 48 CFR 6101.32(a), 6101.33(a)(1). Tom and Tony's has not demonstrated that the memorandum meets the rule's requirements. It offers no reason why the document, which was written on March 13, 2001, could not have been discovered earlier, even with due diligence. This is ample cause to reject the document as a basis for reconsideration.

There is an even more compelling basis for us to deny the motion, however. The memorandum does not help Tom and Tony's case because it does not demonstrate that Tom and Tony's had a contract with GSA, much less that GSA breached that contract. To the contrary, the memorandum lists the vendors that the author believes have contracts with GSA -- and Tom and Tony's is not among them. This type of evidence does not merit reconsideration of our earlier decision.

Decision

The motion for reconsideration is **DENIED**.

ROBERT W. PARKER
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

CATHERINE B. HYATT
Board Judge