Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

APPELLANT'S MOTION FOR RECONSIDERATION DENIED;
RESPONDENT'S MOTION FOR RECONSIDERATION GRANTED;
GSBCA 16504 MODIFIED ON RECONSIDERATION: September 30, 2005

GSBCA 16504-R, 16610-R

ADVANCED INJECTION MOLDING, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Douglas Lund, President of Advanced Injection Molding, Inc., Forest Grove, OR, appearing for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **GOODMAN**.

DANIELS, Board Judge.

Both parties have moved for reconsideration of the Board's decision in *Advanced Injection Molding, Inc. v. General Services Administration*, GSBCA 16504, et al. (July 21, 2005). In that decision, the Board resolved a claim made by the General Services Administration (GSA) in a case docketed as GSBCA 16504, as well as three claims made by the contractor, Advanced Injection Molding, Inc. (AIM), in a case docketed as GSBCA 16610. In GSBCA 16504, the Board held that GSA erroneously had paid more money than

provided by contract for signs manufactured by AIM, and that GSA was entitled to recover from AIM the amount of the overpayments. In GSBCA 16610, the Board denied AIM's three claims – that GSA had "wrongfully auctioned off" AIM's contract by awarding purchase orders to another vendor, violated the minimum order limitation of the contract by issuing purchase orders in dollar amounts of less than a certain figure, and damaged AIM's ability to obtain credit by making a claim for a refund of the overpayments.

AIM has moved for reconsideration of the Board's decision on the ground that the decision was based on "misstatements of . . . facts" by GSA. Those misstatements, according to AIM, were "inaccurate, false and misrepresented what actually occurred." AIM has also asked for additional discovery regarding the actions addressed in the alleged misstatements.

GSA has moved for reconsideration of the decision as to GSBCA 16504 on the ground that the Board has erred as a matter of law in concluding that the Government was not entitled to interest on the portion of its claim which was upheld.

AIM's motion is denied. In resolving the cases, the Board accepted statements made in a declaration by a GSA contract specialist regarding the insertion, into purchase orders issued to AIM, of prices different from those required by the contract. AIM presented legal argument, but no evidence, challenging these statements. The Board found the statements, uncontroverted as they were, to be credible. In asking for reconsideration, AIM has not pointed to any evidence, in the record or newly discovered, as reason for altering this finding. With particular reference to one of its own claims, regarding the issuance of the purchase orders to another vendor, AIM did present an affidavit of its president that the issuance of these purchase orders "violated that contract" between GSA and AIM. This statement is legal argument, not evidence, and cannot serve as the basis of any finding.

In asking for additional discovery, AIM ignores the fact that it agreed to a schedule for resolving the cases which ended discovery at a particular time and envisioned what came to pass – resolution through a decision rendered on the basis of evidence submitted by both parties. The time for discovery is long past. In any event, the principal concern as to which AIM seeks more information – the cause of the insertion of the incorrect prices into the purchase orders – is not important to the resolution of the Government claim. What is important is that the prices were incorrect, and that as a result of their insertion, AIM was overpaid for the signs it supplied. Any additional information would not change the outcome of the cases.

GSA's motion is atypical in that it is not founded on any of the usual bases for asking for reconsideration of a decision. *See* Rules 132, 133 (48 CFR 6101.32, .33 (2004)). Nevertheless, it deserves serious attention. In evaluating a request for reconsideration, a

tribunal must "strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the [tribunal's] conscience that justice be done in light of *all* the facts." *Koll Construction Co. v. General Services Administration*, GSBCA 12306-R, 94-2 BCA ¶ 26,599, at 132,344 (1993) (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (4th Cir. 1981) (internal quotation marks omitted)). "Reconsideration is always appropriate where the tribunal is convinced that correcting the original decision may be necessary to avoid a manifest injustice." *Twigg Corp. v. General Services Administration*, GSBCA 14639-R, 99-1 BCA ¶ 30,310, at 149,877. The tribunal would be so convinced where the movant "point[s] to controlling decisions or data that the [tribunal] overlooked – matters, in other words, that might reasonably be expected to alter the conclusions reach[ed] by the [tribunal]." *Rowe, Inc. v. General Services Administration*, GSBCA 15217-R, 03-1 BCA ¶ 32,215, at 159,328-29 (quoting *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)). We grant GSA's motion because the agency has persuaded us, by pointing to controlling law, that an injustice will occur if we allow our original decision to remain uncorrected as to the matter of interest owed by AIM.

Earlier, GSA asked the Board to award it interest on the amount we required AIM to refund to the Government, but the agency cited no authority which would empower us to make the award. Neither the contract between the parties nor the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (2000), under which we decided these cases, requires the contractor to pay interest on a refund of an overpayment. We were unable to find a provision in the Federal Acquisition Regulation (FAR) which mandated the payment of interest, either. Consequently, we did not award any interest on the amount of the Government claim which we found to be justified.

In asking for reconsideration, GSA asserts that the Board is obliged to recognize the Government's right to interest under by the Debt Collection Act of 1982, 31 U.S.C. § 3717. We agree.

As the Supreme Court explained many years ago, "A suit upon a contractual obligation to pay money at a fixed or ascertainable time is a suit to recover damage for its breach, including both the principal amount *and interest* by way of damage for delay in payment of the principal after the due date." *Royal Indemnity Co. v. United States*, 313 U.S. 289, 295-96 (1941) (emphasis added). Thus, "It is a 'longstanding rule that parties owing debts to the Federal Government must pay prejudgment interest where the underlying claim is a contractual obligation to pay money.'" *United States v. Texas*, 507 U.S. 529, 533 (1993) (quoting *West Virginia v. United States*, 479 U.S. 305, 310 (1987)).

In the Debt Collection Act, Congress provided that "[t]he head of an executive, judicial, or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person." 31 U.S.C. § 3717(a)(1). The term "debt," as used in this section, is synonymous with "claim" and means "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency." *Id.* § 3701(b)(1). A "claim" specifically includes "over-payments." *Id.* § 3701(b)(1)(C). The Supreme Court has commented that in writing the law as it did, "Congress . . . tightened the screws, so to speak, on the prejudgment interest obligations of private debtors to the Government" by "*requir[ing]* federal agencies to collect prejudgment interest against persons." *United States v. Texas*, 507 U.S. at 536, 537; *see also* S. Rep. No. 97-378, at 17 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3377, 3393 (noting that a purpose of the interest provision of the Debt Collection Act was to force agencies to assess and collect interest on debts owed to the Government); 3 General Accounting Office, *Principles of Federal Appropriations Law*, ch. 13, § 4 (2d ed. 1994) (relating generally to the impact of the Debt Collection Act on the collection of interest on Government claims).

The Board found in its original decision as to GSBCA 16504 that AIM owes GSA a debt in the principal amount of $52,157.48, the sum by which the agency overpaid the contractor for the signs it purchased. The debt was originally asserted by a GSA contracting officer. The FAR specifies that a contracting officer is a "responsible official" for "ascertaining and collecting [the Government's] contract debts [and] charging interest on the debts." 48 CFR 32.600, .601. A contracting officer is therefore "an appropriate official of the Federal Government" for the purpose of determining that funds are owed to the Government, to use the phraseology of the Debt Collection Act. AIM is an "entity other than another Federal agency," so its debt is encompassed by that Act. Interest under the Act "accrues from the date . . . notice of the amount due is first mailed to the debtor," 31 U.S.C. § 3717(b)(2) – here, the date of the contracting officer's decision, June 24, 2004. The "minimum annual rate of interest" to be paid on the debt "is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point." *Id.* § 3717(a)(1). The Secretary of the Treasury establishes this rate periodically. *Id.* § 3717(a)(1), (2).

We note that generally, Government contracts include a clause which mandates that the contractor pay interest on amounts due to the Government at rates established under the Contract Disputes Act of 1978. 48 CFR 32.614-1(a), 52.232-17. Where this clause is included in the contract, the clause – and not the Debt Collection Act – is the authority for the Government to assess and collect interest due. *Westchester Fire Insurance Co. v. United States*, 52 Fed. Cl. 567, 584-87 (2002) (applying 31 U.S.C. § 3717(g)(1)). Inclusion of the clause in contracts like the one between GSA and AIM, which are for the acquisition of

commercial items, is discretionary, however, and the clause is not a part of this contract. 48 CFR 12.301(d), (e); Appeal File, Exhibit 11 at 18-20. Nevertheless, having upheld the contracting officer's determination of AIM's debt to GSA in the amount of $52,157.48, we acknowledge the Government's right to interest on that amount pursuant to the Debt Collection Act.

Decision

AIM's motion for reconsideration is **DENIED**. GSA's motion for reconsideration is **GRANTED**. Our decision is **MODIFIED ON RECONSIDERATION** to recognize that in GSBCA 16504, GSA is entitled to interest on the principal amount of $52,157.48. Interest is due in an amount calculated from June 24, 2004, to the date of payment, at the rate or rates prescribed by the Secretary of the Treasury under the Debt Collection Act of 1982.

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STEPHEN M. DANIELS
Board Judge

We concur:

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EDWIN B. NEILL
Board Judge

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ALLAN H. GOODMAN
Board Judge