

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of ENGINEERING )  
TECHNOLOGIES ASSOCIATES, INC. )  
Under DGS Project No. 08.39-5 ) Docket No. MSBCA 1362

April 4, 1988

Motion for Reconsideration - The burden is on the party seeking reconsideration to establish that an error in the Board's decision has been caused by fraud, surprise, mistake or inadvertence. Mere disagreement with the Board's decision is not sufficient to warrant reconsideration.

APPEARANCE FOR APPELLANT

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APPEARANCE FOR RESPONDENT

John H. Thornton  
Assistant Attorney General  
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MEMORANDUM OPINION

Appellant has timely moved for reconsideration of our decision issued on March 15, 1988 which concluded that this Board lacked jurisdiction over the Appellant's appeal. The basis of the Board's decision was that the Legislature has not conferred jurisdiction on this Board to resolve a dispute concerning the formation of a contract for architectural or engineering services costing \$100,000 or less.

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The appellant asserted in its motion to reconsider that the Board erred in its legal determination that it did not have jurisdiction. The motion also alluded to legal memoranda filed by counsel for the Department of General Services (DGS) which likewise concluded that the Board had jurisdiction.<sup>1</sup> In its answer to Appellant's motion to reconsider, DGS stated that "it neither favors nor opposes the motion" on grounds that the motion is moot due to award of the contract to another firm on March 24, 1988.

This Board has held that a motion for reconsideration of its decision, to be considered favorably, should demonstrate that the Board's decision was in error through fraud, surprise, mistake or inadvertence. II Firstfield Road Limited Partnership, MSBCA 1232, 2 MSBCA ¶117 (1985); Reliable Janitor Service, MSBCA 1247, 2 MSBCA ¶126 (1986). No facts are alleged in Appellant's motion from which it could be inferred that the Board's decision was in error through fraud, surprise, mistake or inadvertence; nor is there any matter in the Supplemental Memorandum in support of Motion to Dismiss filed by DGS after the board issued its decision that suggests that the Board's decision was in error through fraud, surprise, mistake or inadvertence.

The Appellant merely argues in its motion that the Board's decision is legally incorrect because:

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<sup>1</sup>One of the memoranda titled Supplemental Memorandum in Support of Motion to Dismiss, was filed on March 18, 1988 after the Board issued its opinion on March 15, 1988. Despite the conclusion drawn in the memoranda that the Board has jurisdiction over Appellant's appeal, DGS has never withdrawn its Motion to Dismiss.

The language of SF-11-138 (c) (1) is: "The Appeals Board shall have jurisdiction to hear and decide all appeals arising under the provision of 11-137 (f) of the subtitle."

11-137(f) provides: "(1) A bidder or offeror...may appeal the final action of a procurement agency to the appeals board: (i) within 10 days...as to a protest regarding formation of a contract..."

Neither 11-138(c) (1) nor 11-137(f) contain any limitation as to the jurisdiction of the Board to hear A and E contract formation disputes. It is only 11-137(a) - 11-137(d) which are excluded from A and E contract formation. 11-137(f) is not excluded.

11-137(g) deals with disputes arising from recommendations of the TPSSB and the GPSSB to the Board of Public Works, and provides that such disputes be resolved by appeal to that Board. When the contract amount is less than \$100,000, neither the TBSSB nor the GPSSB will be involved, hence no appeal can be made to the Board of Public Works.

If this Board in fact does not have jurisdiction over A and E contract formation disputes for amounts under \$100,000, there appears to be no administrative remedy available for resolution of such disputes. Such disputes could only be resolved by judicial proceedings, and small contractors would not have the benefit of the inexpensive means to resolve disputes that is afforded others.

It is very doubtful that the legislature intended such a situation.

We considered these possibilities raised in Appellant's motion in rendering our decision and are not persuaded that our decision is legally incorrect.

DGS in its memoranda in support of its motion to dismiss essentially argues that this Board has jurisdiction over appeals in disputes involving the formation of contracts for architectural and engineering services where contract formation, because of the applicable monetary threshold, was not processed through the TPSSB or GPSSB. We considered and rejected this possible construction of legislative intent in our decision and have found nothing in either the supplemental

memorandum or materials pertaining to legislative history attached thereto to suggest error in our decision.

For the foregoing reasons, Appellant's Motion to Reconsider is denied.