

RAJI ABDUS-SALAAM)	AGBCA No. 99-147-R
d/b/a ONE ON ONE CONSULTING &)	
DEVELOPMENT CORP.,)	
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Raji Abdus-Salaam)	
P.O. Box 1751)	
Lincolnton Station)	
New York, New York 10037)	
)	
Representing the Government:)	
)	
Marion T. Cordova)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
Room 2321 South Building)	
1400 Independence Avenue, S.W.)	
Washington, D.C. 20250-1400)	

RULING ON APPELLANT’S MOTION FOR RECONSIDERATION

 March 26, 1999

OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

Pursuant to Board Rule 29, Motion for Reconsideration,¹ Raji Abdus-Salaam, d/b/a One on One Consulting & Development Corp., of New York, New York (Appellant), has requested the Board to reconsider its Ruling dismissing Appellant’s appeal for lack of jurisdiction. Raji Abdus-Salaam, d/b/a One on One Consulting & Development Corp., AGBCA No. 99-106-1, 1999 WL 47267 (Jan. 26, 1999).

Background

This appeal arose from a consulting agreement between the Town of Enfield in Halifax County, North Carolina, and Appellant. The contract, among other things, required Appellant to develop a long-term strategy to spur economic, business and commercial activity in the Town. The agreement

¹7 C.F.R. 24.21, Rules of Procedure of Agriculture, Board of Contract Appeals (AGBCA).

was dated March 1, 1997, and would terminate “July 1998.”

Appellant was notified by letter dated August 24, 1998, that the Town had elected not to extend or renew the contract. Appellant characterized the Town’s action as a wrongful “termination” of the contract and appealed to the Board on the basis that the funding for the contract allegedly originated with the Department of Agriculture. In the Board’s docketing letter, we noted the contract was with the Town and not this Department, and that therefore, the Board had no jurisdiction over the matter, notwithstanding the fact that funding might have originated with this Department. We also noted that the Board had no authority to grant the equitable relief requested, such as reinstatement of the contract, punitive damages, or debarment of the Town.

The parties were given an opportunity to respond to the Board’s docketing letter. Appellant continued to insist the Board had jurisdiction. The Government filed a Motion to Dismiss for Lack of Jurisdiction.

In granting the Government’s Motion and dismissing the appeal, the Board held:

The Government’s position is correct. Under the CDA, the Board’s jurisdiction is limited to contracts with an executive agency. This contract is based upon grant money, and was entered into by other than an executive agency. Similarly, the Board lacked jurisdiction over a dispute arising from a contract with an irrigation company which in turn was the recipient of Government assistance in the form of a grant. Esco Construction Co., AGBCA No. 95-101-1, 95-1 BCA ¶ 27,324. See also, Diversified Marine International, Inc., AGBCA No. 90-118-1, 91-1 BCA ¶ 23,485; R. W. Beck & Associates, AGBCA No. 85-241-1, 85-3 BCA ¶ 18,344; and Eastern Indemnity Co., AGBCA No. 85-186-1, 85-3 BCA ¶ 18,240.

The facts here clearly show that the dispute arose under a grant-based contract between Appellant and the Town of Enfield, North Carolina. The latter is not an executive agency. It is not clear from the facts that funding originated from this Department or instead from the Department of Health and Human Services. Irrespective of the origin of the funding, it is clear that the funding connection between the Town, as the contracting entity, and the interests of the Department, is not so close or proximate as to render Appellant’s contract as one with an executive agency. The Appellant has not shown otherwise, and has not referenced a contract provision or regulation, that the Board has jurisdiction to resolve the matter.

DISCUSSION

Appellant has timely requested that the Board reconsider its ruling, asserting that the Board erred. Appellant essentially reargues the facts and evidence already considered. The Government opposes reconsideration.

As we held in Jeff Holland Logging, AGBCA No. 97-115-R, 97-1 BCA ¶ 28,761:

Reconsideration is discretionary with the Board and will not be granted except for compelling reasons. The discovery of new evidence not discoverable during the original proceedings might provide a compelling reason. Control Data Corp., ASBCA No. 16448, 76-2 BCA ¶ 12,107. So might a clear error in the Board's decision. C.G. Norton Co., IBCA No. 1647-1-83, 84-2 BCA ¶ 17,310. Reargument of positions that were taken, or could have been taken, during the original proceedings are not compelling reasons. Preston-Brady Co., VABCA No. 1849R, 88-1 BCA ¶ 20,260.

Appellant's Motion is based upon a reargument of positions taken, or that could have been taken, during the original proceedings. They are not compelling reasons for reconsideration. Therefore, the Board will not reconsider its decision.

RULING

Appellant's Motion is denied.

EDWARD HOURY
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
March 26, 1999