



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: August 23, 2024

CBCA 7805-R

Y2FOX, INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Abass Y. Bamba, Managing Director of Y2Fox, Inc., Denver, CO, appearing for Appellant.

Alexandra N. Wilson, Office of the Legal Advisor, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **CHADWICK**, and **VOLK**.

VOLK, Board Judge.

Appellant, Y2Fox, Inc. (Y2Fox), moves for reconsideration of our July 22, 2024, decision granting its appeal in part. *Y2Fox, Inc. v. Department of State*, CBCA 7805, 24-1 BCA ¶ 38,630. We deny the motion.

In our July decision, we sustained the Department of State's (DOS's) termination of Y2Fox's contract for cause. We found that Y2Fox largely failed to satisfy the requirements of the contract's Deliverable 12.1, which corresponded to contract line item number (CLIN) 001. *Y2Fox, Inc.*, 24-1 BCA at 187,787. However, we found that DOS accepted Y2Fox's work on the "requirements gathering" element of Deliverable 12.1 and decided that Y2Fox is entitled to recover ten percent of the contract amount for CLIN 001. *Id.* at 187,789.

In its motion for reconsideration, Y2Fox argues that the “requirements gathering” portion of the deliverable should be valued at ninety-eight percent of CLIN 001, rather than ten percent.

A motion for reconsideration is not an opportunity for a litigant to reargue its case. Reconsideration is warranted only in “extraordinary circumstances.” *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004). “The three primary grounds that justify reconsideration are: (1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.” *Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (Fed. Cir. 2010) (internal quotation marks omitted). The Board “will not address new arguments or evidence that the moving party could have raised before the [original] decision issued.” *Banister v. Davis*, 590 U.S. 504, 508 (2020). Arguments that were forfeited because they were not timely asserted cannot be resurrected on reconsideration. See *Philip Morris Products S.A. v. International Trade Commission*, 63 F.4th 1328, 1336–37 (Fed. Cir. 2023); *Caldwell*, 391 F.3d at 1235; *Hazani v. United States International Trade Commission*, 126 F.3d 1473, 1476–77 (Fed. Cir. 1997).

The arguments raised by Y2Fox were forfeited and do not justify reconsideration. As we noted, Y2Fox argued in its claim and in merits briefing that it was entitled to full payment for CLIN 001, eschewing any alternative argument for partial payment. See *Y2Fox, Inc.*, 24-1 BCA at 187,787, 187,789. We determined that Y2Fox is not entitled to full payment for CLIN 001 because it largely failed to satisfy the requirements of Deliverable 12.1. *Id.* at 187,789. Regarding partial payment for the portion of Deliverable 12.1 that DOS accepted, we found “little to no evidence that Y2Fox’s success in completing ‘requirements gathering’ is of significant value by itself.” *Id.* Relying on an assessment by the contracting officer’s representative, we awarded Y2Fox ten percent of the price of CLIN 001. *Id.*

Y2Fox now presents various arguments aimed at convincing the Board “that the requirements gathering phase represents 98% of the effort and monetary value of the 12.1 deliverable.” Y2Fox forfeited its arguments regarding how much of the CLIN 001 amount to allocate to “requirements gathering” by failing, without good excuse, to present them during briefing. Y2Fox fails to justify reconsideration.

Decision

Y2Fox's motion for reconsideration is **DENIED**.

Daniel B. Volk

DANIEL B. VOLK
Board Judge

We concur:

Erica S. Beardsley

ERICA S. BEARDSLEY
Board Judge

Kyle Chadwick

KYLE CHADWICK
Board Judge