



JONATHAN L. KANG
Chair

GOVERNMENT ACCOUNTABILITY OFFICE
CONTRACT APPEALS BOARD

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Vice Chair

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| _____ | |) | |
| COLONIAL PRESS | |) | |
| INTERNATIONAL, INC. | |) | |
| | Appellant, |) | |
| | |) | |
| v. | |) | CAB No. 2020-02 |
| | |) | |
| GOVERNMENT PUBLISHING | |) | |
| OFFICE | |) | |
| | |) | |
| | Respondent. |) | |
| _____ | |) | |

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| Appearance for the Appellant: | Anthony Hawks, Esq. Hawks Law Office |
| Appearance for the Respondent: | James Goodman III, Esq. U.S. Government Publishing Office |
| Board Members: | Jonathan L. Kang (Presiding) Peter H. Tran Heather Weiner |

QUANTUM AND RECONSIDERATION

Appellant, Colonial Press International, Inc. (Colonial Press), appealed a contracting officer’s final decision by respondent, the Government Publishing Office (GPO) in connection with Purchase Order No. 92496 (Purchase Order), invitation for bids— Jacket No. 409-192 (IFB), which GPO issued for production of census questionnaires.¹

¹ The background of this Appeal is set forth in our decision in *Colonial Press Int’l, Inc.*, GAO CAB No. 2020-02, __ BCA __ and is repeated here only as necessary.

As relevant to this Appeal, Colonial Press purchased A80 paper in its performance of the Purchase Order. GPO partially terminated the Purchase Order for the convenience of the government, and the parties executed a settlement agreement. After the execution of the settlement agreement, appellant did not turn over the paper to GPO, and the contracting officer issued a final decision asserting a claim of \$161,145.60 against Colonial Press for the value of the paper.

The Board issued a decision on October 21, 2022, denying appellant's motion for summary judgment, and granting in part respondent's cross-motion for summary judgment. *Colonial Press Int'l, Inc.*, GAO CAB No. 2008-6, at 18. Our decision concluded that although GPO was entitled to recover the paper, the record did not establish the value of the paper. *Id.* at 15-16. In this regard, we found that appellant's settlement proposal of \$293,044.36 itemized its claim, including the value of the paper. *Id.* at 16. Respondent's counter-proposal of \$246,486.26, in contrast, was not itemized, and did not specify a value for the paper. *Id.* Because the settlement was based on a non-itemized counter-proposal, we concluded that there was no agreement as to the value of the paper, and therefore directed the parties to brief the issue of quantum. *Id.* at 16, 18. As discussed below, the parties have advised the Board that they agree to a stipulation as to the quantum of recovery for the paper and the amount of interest accrued on the claim.

On October 26, Colonial Press filed a timely motion to reconsider our decision denying its motion for summary judgment and granting in part respondent's motion for summary judgment with regard to Count I of the complaint, which argued that appellant was not required to turn over the paper under the terms of the settlement agreement, and that respondent improperly issued a final decision asserting a claim for the value of the paper. For the reasons discussed below we DENY the motion for reconsideration.

Quantum

Appellant and respondent stipulate that, for purposes of establishing the amount to be recovered by the government, the value of the A80 paper is \$135,543.22. Email from Colonial Press to CAB, Nov. 15, 2022; Email from GPO to CAB, Nov. 16, 2022. Based on appellant's and respondent's stipulations that the value of the paper is \$135,543.22, and the \$161,145.60 recovered by GPO through offsets on other contracts we find that appellant is entitled to recover from the government the sum of \$25,602.38.

With regard to interest, the Contract Disputes Act states as follows: "Interest on an amount found due a contractor on a claim shall be paid to the contractor for the period beginning with the date the contracting officer receives the contractor's claim . . . until the date of payment." 41 U.S.C. § 7109(a). Appellant and respondent have stipulated that the statutory interest due on the amount of \$25,602.38, through November 30, 2022, is \$987.54, and that the daily rate of interest accruing from November 30 to December 31, is \$2.81.² Appellant Statement on Statutory Interest, Nov. 22, 2022, at 3;

² The Department of the Treasury has issued an interest rate of 4.625 percent for the period of January 2023, through June 2023. Prompt Payment Interest Rates, www.fiscal.treasury.gov/prompt-payment/rates.html (last visited Jan. 12, 2023). We

Email from GPO to CAB, Nov. 30, 2022. Based on appellant's and respondent's stipulations regarding interest that has accrued since the filing of the appeal, appellant is also entitled to recover from the government interest consistent with the stipulation on interest set forth above.

Motion for Reconsideration

Colonial Press moves for reconsideration of our October 22, 2022, decision with regard to our denial of its motion for summary judgment on Count I of its complaint, and our grant in part of GPO's motion for summary judgment on Count I.

Our Rules provide for consideration of a motion for reconsideration as follows:

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 15 days of receipt of a copy of the Board's decision. Mere disagreement with a decision, re-argument of points already made, or the presentation of new evidence that could have been presented during the appeal but was not, are not sufficient grounds for reconsideration. A motion pending under Rule 21 does not affect the finality of a decision or suspend its operation.

CAB Board Rule 21.

A motion for reconsideration does not provide the moving party the opportunity to reargue its position or to advance arguments that properly should have been presented in an earlier proceeding. See *Dixon v. Shinseki*, 741 F.3d 1367, 1378 (Fed. Cir. 2014). In deciding a motion for reconsideration, we examine whether the motion is based upon newly discovered evidence, mistakes in our findings of fact, or errors of law. The moving party must show a compelling reason why the Board should modify its decision.

Colonial Press raises two primary arguments in support of its motion for reconsideration: (1) our decision failed to address appellant's contention that the Settlement Agreement was silent as to the return of the A80 paper, and therefore, the parole evidence rule precluded consideration of any information outside the Settlement Agreement to establish that respondent was entitled to recover the paper; and (2) the Settlement Agreement included release language that precluded respondent's recovery of the paper. Mot. for Recon. at 1-2.

In general, we view appellant's motion for reconsideration as reiterating arguments that were previously raised, and that we found did not merit granting its motion for summary judgment. To the extent appellant believes that our decision was defective in a manner warranting reversal because it did not specifically address the two arguments identified in the motion for reconsideration, we find no basis to reconsider our decision.

assume the parties will take this interest rate into consideration when calculating the final payment.

Our decision stated as follows, which is relevant to the two arguments:

Colonial Press does not dispute that respondent had an interest in the A80 paper: “Appellant does not contest that GPO retained a termination for convenience ‘interest’ in the unused paper which Colonial Press had a duty to protect and preserve under GPO Contract Terms, Contract Clause 19(b)(6).” App. Response to Board Questions, Apr. 5, 2021, at 3. Instead, appellant contends that the Counter Proposal intentionally excluded payment for the A80 paper, thereby entitling Colonial Press to retain it. *Id.* at 2. Alternatively, appellant contends that “GPO voluntarily waived and relinquished this interest when the Settlement Agreement was executed.” *Id.* at 3 n.1.

Colonial Press Int’l, Inc., GAO CAB No. 2008-6, at 11.

As noted above, appellant acknowledged in response to questions from our Office concerning respondent’s arguments that GPO retained an interest in the paper based on the terms of the contract. *Id.* Our decision concluded that nothing in the Counter Proposal³ or the Settlement Agreement waived the government’s right to recover the paper or appellant’s obligation to turn it over. *Id.* at 12-15. In this regard we noted that waiver occurs when a party intentionally relinquishes a known right. *Id.* at 13 (*citing Chugach Fed. Solutions, Inc.*, ASBCA No. 61320, 19-1 BCA ¶ 37,314 at 181,496). We found that nothing in the Settlement Agreement reflected such an intentional and knowing relinquishment of the government’s right. *Id.* at 14. For this reason, we found no need to address appellant’s arguments that the parole evidence rule precluded consideration of information outside the terms of the settlement agreement to establish that respondent was entitled to recover the paper, or that the release language in the Settlement Agreement precluded the government’s recovery. *Id.* at 14-15.

For the reasons set forth above, we DENY appellant’s motion for reconsideration of our October 21, 2022, decision denying appellant’s motion for summary judgment and granting in part respondent’s motion for summary judgment.

Dated: January 20, 2023

/s/ Jonathan L. Kang
JONATHAN L. KANG
Presiding Member

³ We found no support for appellant’s contention that the counter proposal excluded payment for the paper. *Colonial Press Int’l, Inc.*, GAO CAB No. 2008-6, at 12-13. The appellant’s motion for reconsideration does not challenge this aspect of our decision.

We concur:

/s/ Heather Weiner
HEATHER WEINER
Member

/s/ Peter H. Tran
PETER H. TRAN
Member