



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: October 4, 2007

CBCA 670, 713

FLUOR INTERCONTINENTAL, INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Robert M. Fitzgerald and Louis B. Antonacci of Watt, Tieder, Hoffar & Fitzgerald, L.L.P., McLean, VA, counsel for Appellant.

Dennis J. Gallagher and John C. Sawyer, Office of the Legal Adviser, Buildings and Acquisition, Department of State, Arlington, VA, counsel for Respondent.

Before Board Judges **FENNESSY**, **HYATT**, and **GOODMAN**.

GOODMAN, Board Judge.

Fluor Intercontinental, Inc. appealed two decisions of a contracting officer of the Department of State arising from its contract for design and construction work to convert the former 469th Contingency Hospital into a new United States Consulate for Frankfurt, Germany. The first appeal, docketed as CBCA 670, sought payment of \$14,873,208 and entitlement to a time extension of 112 calendar days (referred to in the parties' settlement agreement as the "Omnibus Claim"). The second appeal, docketed as CBCA 713, sought remission of the respondent's assessment of liquidated damages. The appeals were consolidated by order of the Board.

On September 28, 2007, the parties filed a joint motion for stipulated judgment with a settlement agreement that stated in part:

The Government agrees to pay [appellant] the principal sum of FOUR MILLION, TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00), in full satisfaction of the Omnibus Claim, except as provided in paragraph 3.c of this Settlement Agreement, from the United States Department of the Treasury's Judgment Fund (hereinafter the "Judgment Fund"). To effect this payment, [appellant] and the Department of State agree to move jointly to have the Civilian Board of Contract Appeals . . . enter Judgment in favor of [appellant] and against the Department of State in the amount of FOUR MILLION, TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00) and Order that payment is to be made from the Judgment Fund in full satisfaction of the Omnibus Claim filed before the CBCA, CBCA 670. Upon receipt of the Judgment and Order from the CBCA the Department of State Agrees to apply to Judgment Fund [sic] for payment of FOUR MILLION, TWO HUNDRED THOUSAND DOLLARS (\$4,200,000.00) in favor of [appellant]. If [appellant] does not receive from the Government such sum within ninety (90) days of the last date of signature on this agreement, in addition to the principal sum, the government shall pay to [appellant] Contract Disputes Act interest on such amount, accruing from the ninety-first (91st) day after the last date of signature on this agreement.^[1]

Pursuant to the settlement agreement, the respondent also waived entitlement to liquidated damages which were the subject of CBCA 713.

In their joint motion for stipulated judgment, the parties agree that they will not seek reconsideration of or relief from this Board's decision awarding judgment and that they will not appeal the Board's decision.

¹ The parties' joint motion for entry of judgment requests that the Board's decision expressly incorporate all the terms of the settlement agreement. The settlement agreement contains provisions with regard to matters not included in these appeals, and payment of sums not included in the amount awarded by this decision. We do not incorporate those provisions into this decision. Additionally, paragraph 18 of the settlement agreement states in part: "Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the CBCA." The Board makes no determination as to whether its jurisdiction includes the resolution of disputes arising under the settlement agreement.

Decision

Accordingly, these appeals are **GRANTED IN PART**. In accordance with the settlement agreement, the Board awards the sum of \$4,200,000 plus interest in accordance with the Contract Disputes Act, accruing as stated in the settlement agreement if payment is not made as specified in the settlement agreement, to be paid from the permanent indefinite judgment fund. 31 U.S.C. § 1304 (2000).

ALLAN H. GOODMAN
Board Judge

We concur:

EILEEN P. FENNESSY
Board Judge

CATHERINE B. HYATT
Board Judge