



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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GRANTED IN PART: November 18, 2008

CBCA 680, 681, 1047

PHOENIX INDUSTRIAL CONTRACTORS, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Douglas L. Patin and Jeremy Becker-Welts of Bradley Arant Rose & White, LLP, Washington, DC, counsel for Appellant.

James E. Epstein, Office of the Solicitor, Department of the Interior, Newton, MA, counsel for Respondent.

Before Board Judges **POLLACK**, **KULLBERG**, and **WALTERS**.

**POLLACK**, Board Judge.

These appeals arise out of contract no. C1780-00-0004, Northern Canal Phase II, Lowell Historic Park, between Phoenix Industrial Contractors, Inc. and the Department of the Interior, Lowell Historic Park. The appeals involve a dispute regarding assessment of liquidated damages of \$42,105 and a separate overall claim of \$1,256,823, involving various claimed access delays, other delays, changes, and added work. Two appeals were docketed here as CBCA 680 and 681 on March 19, 2007. The third appeal, CBCA 1047, docketed on January 23, 2008, is essentially duplicative of the two prior docketed appeals. CBCA 1047 was first filed protectively at the United States Court of Federal Claims and then

transferred to the Board. This decision addresses and resolves all three appeal numbers and all claims associated therewith.

After exchanging pleadings, the parties engaged in discovery and then in discussions aimed at exploring settlement on various issues. On March 3, 2008, the Board conducted a conference in Lowell, Massachusetts, at which time the Board and parties discussed and reviewed various issues and legal matters associated with the claims. The parties continued to move forward with the appeals, while engaging in discussions. Thereafter, and based on further discussions with the parties, the Board and parties agreed that a further meeting would be warranted and that at the meeting the Board would again address the various claims and provide assessment and evaluation.

On November 13 and 14, 2008, the parties met at the Board's offices and engaged in evaluative mediation with the presiding judge. Prior to the meeting, the presiding judge re-analyzed and reviewed the extensive record. As part of the process the parties addressed a number of claim elements, focusing on specific factual matters. Additionally, the presiding judge heard arguments from each counsel. The presiding judge addressed the parties as to his preliminary view on various matters involved in the quantum and entitlement elements. During the proceedings, the parties agreed to have the Board provide the parties with the presiding judge's conclusion as to dollar recovery. The presiding judge, after revisiting the record and conducting additional legal analysis, came to a conclusion. The presiding judge concluded, based on his analysis, that appellant should be entitled to \$550,000, plus interest under the Contract Disputes Act (CDA), 41 U.S.C. § 611 (2000), from July 6, 2006, until paid. Consistent with the presiding judge's conclusion, the parties verbally agreed and stipulated that the claim is to be granted in part with the Government to pay the contractor \$550,000, plus interest, with interest being calculated pursuant to the CDA and running from July 6, 2006, until paid. The parties have agreed to be bound by the Board decision to that effect and have stated and affirmed that they have settled any and all claims by either party arising out of or related to contract no. C1780-00-0004, including the instant appeals. Each party has agreed to bear its own costs and attorney fees. The parties have additionally agreed and stipulated that the decision of the Board would be final and binding upon the parties and not subject to further appeal. In separate responses, dated November 17, 2008, the parties confirmed in writing the above-stated agreements.

### Decision

Accordingly, the appeals are **GRANTED IN PART**. In accordance with the parties' agreement, as set out and described above, the Board awards the sum of \$550,000, plus interest on said amount under the Contract Disputes Act, 41 U.S.C. § 611, beginning July 6,

2006. Payment is to be made from the permanent indefinite judgment fund, 31 U.S.C. §1304.

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HOWARD A. POLLACK  
Board Judge

We concur:

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H. CHUCK KULLBERG  
Board Judge

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RICHARD C. WALTERS  
Board Judge