



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

CBCA 505 AND 1436 GRANTED IN PART;
CBCA 504 DISMISSED WITH PREJUDICE: December 10, 2009

CBCA 504, 505, 1436

DICK CORPORATION,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Douglas L. Patin of Bradley Arant Rose & White LLP, Washington, DC, counsel for Appellant.

Dalton F. Phillips and Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **GOODMAN**.

GOODMAN, Board Judge.

Dick Corporation has appealed four decisions of a contracting officer of respondent General Services Administration arising from its contract for construction work for the new United States Federal Courthouse in Miami, Florida. The first appeal, docketed as CBCA 503, is related to the denial of Change Order Request (COR) 297. The second appeal, docketed as CBCA 504, is related to the denial of COR 256. The third appeal, docketed as CBCA 505, is related to the denial of COR 299. The fourth appeal, docketed as CBCA 1436,

is related to the denial of a certified claim submitted by Dick with various pass-through claims from its subcontractors.¹ Various CORs were included in this last claim.

The parties engaged in an alternative dispute resolution proceeding with a Board Judge serving as an ADR neutral. On November 25, 2009, the parties filed a motion entitled “motion for stipulated partial award and partial dismissal with prejudice” with regard to CBCA 504, 505, and 1436. The motion reads in part:

Appellant and Respondent have agreed that, in full and final settlement of all direct cost claims relating to certain change order requests (“CORs”) asserted in the above referenced Appeals, which arose out of the work on the New U.S. Courthouse Project located in Miami, Florida, Appellant and Respondent shall request that the Board enter partial judgment for Appellant in the above referenced Appeals in the total sum of \$3,678,311, plus interest (calculated at the applicable rates pursuant to the Contract Disputes Act) beginning August 10, 2009 until the date of payment to Appellant. The details of this partial settlement, including the specific direct cost COR claims settled and the reserved Appellant claims relating to the above Appeals, are set forth in the attached Settlement Agreement which has been executed by Appellant and Respondent. The terms of the attached Settlement Agreement are hereby incorporated by reference into this motion.

Appellant and Respondent hereby jointly request the Board to issue a decision adopting this Stipulated Partial Settlement, and to take whatever other actions are necessary to allow for payment to Appellant of the \$3,678,311, plus interest as described in the attached Settlement Agreement.

The parties further jointly move that the Board dismiss with prejudice Appeal Nos. 504 and 505 and the portion of Appeal No. 1436 that relates to the direct cost CORs listed in Attachment A of the attached Settlement Agreement.

As part of this Stipulated Partial Settlement, both Appellant and Respondent represent and commit that 1) neither will seek reconsideration or relief from the Board's decision adopting this Stipulated Partial Settlement, and 2) neither will appeal the Board's decision adopting this Stipulated Partial Settlement.

¹ The first three of these appeals were filed at the General Services Administration Board of Contract Appeals (GSBCA) and transferred to this Board in January 2007.

The settlement agreement stated in part:

1) In full and final settlement of the direct cost claims by Dick and its subcontractors relating to the CORs listed on Attachment A hereto, the GSA and Dick shall enter into a joint stipulation in which the parties request that the Board enter partial judgment in the amount of \$3,678,311, plus interest calculated at the rates applicable pursuant to the Contract Disputes Act beginning August 10, 2009 until the date of payment to Dick. (The \$3,678,311 plus the described interest is herein referenced to as the "Settlement Amount"). The \$3,678,311 amount is the sum of the direct cost settlements detailed on Attachment B hereto, and consists of the following: direct cost CORs related to Dynaletric (\$1,415,807); direct cost CORs related to Kirlin (\$489,616); direct cost CORs related to Cyrus (\$138,151); and direct cost CORs related to Dick (\$1,634,737). The joint stipulation shall also include a request that the Board dismiss with prejudice Appeal Nos. 504 and 505 and dismiss with prejudice the portion of Appeal No. 1436 that relates to the direct cost CORs listed on Attachment A hereto. Except for the interest described herein and except for the reservations contained in Paragraph 4 below, this settlement is inclusive of any costs, interest, and attorney fees claimed by Dick to the extent specifically related to the direct cost CORs listed on Attachment A hereto.

...

3) It is agreed that the payment of the Settlement Amount to Dick fully compensates Dick for all direct costs and markup of Dick and its subcontractors relating to each of the CORs listed on Attachment A. As such, in consideration of the commitments set forth herein, Dick (on behalf of itself and its subcontractors) hereby waives and releases all claims, demands or causes of action, whether present, future, known, or unknown, against the GSA for any and all direct costs or associated markup relating to each of the CORs listed on Attachment A hereto.

4) It is agreed that the waiver and release contained in this Agreement does not apply to any claims, demands or causes of action which Dick (on behalf of itself or its subcontractors) may have against the GSA for any delays, inefficiencies, impacts or other such costs arguably attributable or related to the changed or added work referenced in the CORs contained in Attachment A. Any such claims, demands or causes of action are fully reserved by Dick and its subcontractors. Additionally, it is agreed that certain CORs previously submitted by Dick to the GSA have not yet been settled and are not covered

by this Agreement. Those CORs are identified with the following COR Numbers: 197; 297; 59; 47; 210; 206; 135; 49 and 67.^[2] Dick and its subcontractors reserve all claim rights relating to those nine listed CORs.

In their motion for stipulated partial award and partial dismissal with prejudice, 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.

Decision

Accordingly, CBCA 504 is **DISMISSED WITH PREJUDICE**. CBCA 505 and 1436 are **GRANTED IN PART**.³ In accordance with the settlement agreement, the Board awards the sum of \$3,678,311, plus interest in accordance with the Contract Disputes Act, accruing as stated in the settlement agreement, to be paid from the permanent indefinite judgment fund. 31 U.S.C. § 1304 (2000).

ALLAN H. GOODMAN
Board Judge

² COR 297 is the subject of CBCA 503. The other eight CORs listed as not yet settled and not covered by the Agreement are included in CBCA 1436.

³ The parties' motion requested that the Board dismiss with prejudice CBCA 504, CBCA 505, and the portion of CBCA 1436 that related to the CORs listed in Attachment A of the settlement agreement. During a conference on December 3, 2009, counsel advised the Board that 1) no portion of the settlement amount was allocated to COR 256, which is listed in Attachment A of the Settlement Agreement as settled and is the subject of CBCA 504, and 2) a portion of the settlement amount was allocated to COR 299, which is listed in Attachment A of the Settlement Agreement as settled and the subject of CBCA 505. We dismiss with prejudice the appeal that is settled and to which funds are not allocated in the settlement amount, and we grant in part the appeals to which funds are allocated in the settlement amount. After issuance of this decision, CBCA 503 and portions of CBCA 1436 remain before the Board. We quote the relevant portions of the parties' settlement agreement in which they identify that which has been settled and released and that which has not.

We concur:

STEPHEN M. DANIELS
Board Judge

JAMES L. STERN
Board Judge