



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: October 27, 2009

CBCA 1081, 1082, 1606, 1685

JBG/TWINBROOK METRO L.L.C.,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent in CBCA 1081,
1082, and 1685,

and

GENERAL SERVICES ADMINISTRATION,

Respondent in CBCA 1606.

Vincent Mark J. Policy of Greenstein DeLorme & Luchs, P.C., Washington, DC,
counsel for Appellant.

Charles E. Curran and Jonathan Baker, Office of the General Counsel, Department
of Health and Human Services, Washington, DC, counsel for Respondent in CBCA 1081,
1082, and 1685; Thomas Y. Hawkins and James F. H. Scott, Office of General Counsel,
General Services Administration, Washington, DC; and Elizabeth H. Johnson, Office of
Regional Counsel, General Services Administration, Washington, DC, counsel for
Respondent in CBCA 1606.

Before Board Judges **HYATT**, **DRUMMOND**, and **SHERIDAN**.

HYATT, Board Judge.

These appeals assert claims arising from the lease of space located in Rockville, Maryland, owned by appellant, JBG/Twinbrook Metro L.L.C. (JBG)¹, and occupied by the Department of Health and Human Services, National Institutes of Health (NIH). Initially, the lease was held by the General Services Administration (GSA). In 2005, GSA delegated leasing authority to NIH. The premises were primarily used as a flow laboratory and associated space. The Government was required to decommission the flow laboratory when it vacated the premises. NIH terminated the lease in February 2008.

CBCA 1081 and 1082 are appeals of the NIH contracting officer's denial of JBG's certified claims for delay and termination damages with respect to the NIH lease. CBCA 1606 and 1685 arose from the denials, respectively, by the GSA and NIH contracting officers, of claims for damages incurred by reason of the Government's failure to decommission the flow laboratory.

On October 23, 2009, the parties filed an amended joint motion for entry of judgment, together with a copy of the settlement agreement executed by the parties. The settlement agreement provides in pertinent part that:

In full and final settlement of all claims asserted or which could have been asserted with respect to the contested matters in the pending CBCA cases, NIH, through the United States Treasury, agrees to pay to JBG the sum of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00), inclusive of all interest and costs to the date of judgment, and GSA agrees to pay to JBG the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00), inclusive of all interest and costs to the date of judgment (collectively the "Settlement Proceeds").

The settlement agreement also provides that NIH would undertake to decommission the property and release it to JBG for unrestricted use, and that by a specified time, NIH shall remove from the leased premises its equipment, materials, and inventory associated with the operation of the flow laboratory. As of October 23, 2009, the laboratory had been

¹ The lease was originally entered into between JBG/JER Twinbrook Metro L.L.C. The appellant is now known as JBG/Twinbrook Metro L.L.C.

decommissioned and arrangements had been made for removal of materials and equipment from the premises.

The parties have agreed that they will not seek reconsideration of, or relief from, the Board's decision, and that they will not appeal the decision. They have also executed certificates of finality.

Finally, the settlement agreement provides that counsel will jointly request the CBCA to enter judgment in accordance with their settlement agreement and award JBG the sum of \$1,900,000 to be paid by NIH and \$100,000 to be paid by GSA. The award against NIH shall be paid from the permanent indefinite judgment fund and NIH and JBG have agreed to take the steps necessary to obtain payment from the permanent indefinite judgment fund. GSA has agreed to make payment of \$100,000 within thirty days of the date that the stipulated judgment decision is issued. The agreement further provides that if the judgment is not paid in full within thirty days of the date it is issued, the unpaid amounts shall bear interest from and after that date, at the rate provided by the Contract Disputes Act, 41 U.S.C. § 611 (2006), until paid in full. Interest on the NIH judgment shall be payable from the permanent indefinite judgment fund; interest on GSA's judgment shall be paid directly.

Decision

These appeals are **GRANTED IN PART** in accordance with the parties' settlement agreement. The amount of \$1,900,000 is to be paid from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2006). The amount of \$100,000 is to be paid directly by GSA to JBG. To the extent that any of the total amount of \$2,000,000 is not paid within thirty days of the date of this decision, interest, at the rate provided pursuant to 41 U.S.C. § 611, shall accrue, commencing on the thirtieth day after issuance of the stipulated judgment until the total amount and all outstanding interest thereon are paid.

CATHERINE B. HYATT
Board Judge

We concur:

JEROME M. DRUMMOND
Board Judge

PATRICIA J. SHERIDAN
Board Judge