



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART; DISMISSED WITH PREJUDICE IN PART: May 11, 2009

CBCA 1396

MYTHICS, INC.,

Appellant,

v.

DEPARTMENT OF LABOR,

Respondent.

Michael E. Geltner of Geltner and Associates, PC, Falls Church, VA; and James E. McCollum, Jr., College Park, MD, counsel for Appellant.

Herman J. Narcho and Dennis Adelson, Office of the Solicitor, Department of Labor, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **McCANN**, and **WALTERS**.

WALTERS, Board Judge.

The respondent, Department of Labor (Department), and the appellant, Mythics, Inc. (Mythics), entered into a Blanket Purchase Agreement (BPA)/Lease to Ownership Plan (LTOP) under contract number GS35F0153M for the Department to acquire certain program licenses and support services from Mythics for support of various Department programs and offices. By letter of its counsel dated May 28, 2008, Mythics submitted to the Department's contracting officers certified claims for alleged breach regarding alleged unpaid lease payments as well as for a constructive termination for convenience, in the amount of \$3,437,549.57, plus a certified claim for \$103,808.93, for alleged maintenance and services. No contracting officer's decisions were rendered with respect to the claims, and the instant appeal was filed on October 30, 2008, based on a "deemed denial."

Pursuant to an alternative dispute resolution (ADR) proceeding presided over by Board Judge Howard A. Pollack, the parties entered into a settlement agreement and filed with the Board a joint motion for stipulated judgment, under which the parties seek an order of the Board that Mythics be paid \$1,291,000 from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2006), for all claims under the appeal, excluding the constructive termination for convenience claim. The parties further agreed that they would bear their own costs with respect to the appeal.

As to the constructive termination for convenience claim, the parties agreed that, upon execution of their settlement agreement, the Department's contracting officer would issue a decision to pay Mythics' assignee, the National City Bank, the sum of \$1,409,000, and on that basis, they agreed to have the Board dismiss with prejudice that portion of the appeal pertaining to the claim for constructive termination for convenience. The settlement agreement indicates that neither party will seek reconsideration of, or relief from, the Board's decision (under Board Rules 26 and 27, respectively), and neither party will appeal the Board's decision.

Decision

This appeal is **GRANTED IN PART**. In accordance with the parties' settlement agreement and joint motion for stipulated judgment, the Board awards appellant the sum of \$1,291,000 for all claims under the appeal other than appellant's claim for constructive termination for convenience. Payment of said sum is to be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304. The parties shall bear their own costs with respect to the appeal. The Board further orders that the portion of the instant appeal relating to appellant's claim for constructive termination for convenience hereby is **DISMISSED WITH PREJUDICE**.

RICHARD C. WALTERS
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

R. ANTHONY McCANN
Board Judge