



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: August 19, 2010

CBCA 1704

HEERY/PMC JV,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

William E. Dorris of Kilpatrick Stockton LLP, Atlanta, GA, counsel for Appellant.

Kenneth B. MacKenzie, Charlma J. Quarles, and Phillipa L. Anderson, Office of the General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

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

McCANN, Board Judge.

Heery/PMC JV (Heery) contracted with the Department of Veterans Affairs (VA) for the construction of a 314 replacement bed building at the VA Medical Center in San Juan, Puerto Rico. The contract was designated as V101BC0213. The municipality of San Juan had a construction excise or sales tax which applied to the construction work under the contract. Heery paid this tax to the city of San Juan in the amount of \$4,767,025. The contracting officer refused to reimburse Heery for this payment.

On April 1, 2009, Heery sent the contracting officer a claim alleging entitlement to the \$4,767,025 which it had paid to San Juan under the San Juan Municipal Construction Tax. On June 22, 2009, the contracting officer denied Heery's claim.

The parties have entered into a settlement agreement whereby they agreed to settle the issues in this case including Contract Disputes Act interest, attorney fees, and any expenses incurred in conjunction with pursuing this appeal. The settlement agreement stated:

NOW THEREFORE, in consideration of the promises and understandings contained herein and intending to be legally bound, the parties do agree as follows:

1. Respondent agrees to pay Appellant the amount of \$4,767,025. This amount represents a complete settlement of the appeal and includes all costs, both direct and indirect, as well as any attorney's fees and expenses and any interest under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613.
2. The parties agree to the Board's issuance of a Judgment in Appellant's favor and shall jointly move the Board for the issuance of such a Judgment in the amount of \$4,767,025, to be paid to Appellant from the permanent indefinite judgment fund, 31 U.S.C. § 1304.
3. Appellant hereby releases the Government from any and all liability for further equitable adjustments attributable to the facts and/or circumstances giving rise to the appeal. Appellant reserves its rights to claim for: (a) any bond adjustments relating to the above settlement payment; and (b) construction municipal tax on change orders to the Contract.

In their motion for judgment on stipulated settlement 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 1704 is **GRANTED**. In accordance with the settlement agreement, the Board awards the sum of \$4,767,025 to be paid from the permanent indefinite judgment fund. 31 U.S.C. § 1304 (2006).

R. ANTHONY McCANN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JAMES L. STERN
Board Judge