



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: September 3, 2015

CBCA 4350, 4781

ARCHER WESTERN/DeMARIA JV II,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

William E. Dorris and Gautam Y. Reddy of Kilpatrick Townsend & Stockton LLP, Atlanta, GA, counsel for Appellant.

Khaliah M. Wrenn and Charlma J. Quarles, Office of General Counsel, Department of Veterans Affairs, Washington, DC; and Helen S. Henningsen, Office of General Counsel, Department of Veterans Affairs, Milwaukee, WI, counsel for Respondent.

Before Board Judges **SOMERS**, **HYATT**, and **ZISCHKAU**.

HYATT, Board Judge.

The Department of Veterans Affairs (VA) and Archer Western/DeMaria JV II (AWD) entered into a contract for the construction of an addition and improvements to the mental health inpatient and outpatient facility located at the VA Medical Center in Bay Pines, Florida. During performance of the contract, a dispute arose concerning whether the VA or AWD was responsible for supplying fuel oil for the underground tanks for the electrical generator. AWD submitted a letter to the contracting officer seeking a determination with respect to this issue, and the contracting officer decided that AWD was contractually required to initially fill the tanks. AWD's appeal of this decision was docketed by the Board as CBCA 4350. AWD filled the tanks with oil and submitted a certified monetary claim to the

contracting officer, seeking reimbursement of the amount of \$343,601 for the costs it incurred in complying with the VA's determination. The denial of this claim was also appealed to the Board, and docketed as CBCA 4781. The two claims were consolidated for further proceedings and the parties undertook to negotiate a resolution of their differences.

The parties have now executed a stipulation of settlement, fully resolving all claims and issues in the consolidated appeals. Under this agreement, the VA will pay to AWD the amount of \$343,601 in full settlement of all costs, direct and indirect, related to the appeals, including, but not limited to, all interest.

The parties have filed a joint motion for stipulated judgment pursuant to Board Rule 25(b) (48 CFR 6101.25(b) (2014)). In this motion, they ask the Board to award to AWD the amount of \$343,601, inclusive of all interest, in accordance with the terms of the stipulation of settlement. The parties state that they will not seek reconsideration of, or relief from, a Board decision which awards the stipulated amount, and will not appeal the decision.

Decision

The appeals are **GRANTED**. The Department of Veterans Affairs shall pay to Archer Western/DeMaria JV II the amount of \$343,601. This payment may be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2012).

CATHERINE B. HYATT
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

JONATHAN D. ZISCHKAU
Board Judge