



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

CBCA 4147 DENIED;
CBCA 4148 GRANTED IN PART:
May 19, 2015

WADE PERROW CONSTRUCTION, LLC,

Appellant,

v.

DEPARTMENT OF COMMERCE,

Respondent.

John P. Ahlers and Elizabeth Weden Perka of Ahlers & Cressman, PLLC, Seattle, WA, counsel for Appellant.

Erin Frazee Masini, Lauren K. Didiuk, and Ashley Powers, Office of the General Counsel, Department of Commerce, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **KULLBERG**, and **ZISCHKAU**.

SHERIDAN, Board Judge.

Appellant, Wade Perrow Construction, LLC (WPC or Contractor), brought claims against respondent, Department of Commerce (Commerce or Agency), regarding amounts due under task order number 10 under contract AB133A-06-CQ-0078 to provide design-build construction and demolition services in connection with the National Oceanic and Atmospheric Administration's (NOAA's) La Jolla Southwest Fisheries Science Center campus.

On December 23, 2013, WPC filed a certified claim seeking \$322,375 in replacement costs for the demolition subcontractor. The claim was denied by the contracting officer and timely appealed to the Board, where it was docketed as CBCA 4147. On June 2, 2014, WPC filed a certified claim alleging approximately 500 days of government-caused delay. WPC sought \$226,250.05 in direct costs and \$1,808,966.10 in unabsorbed home office overhead costs for the delay. The claim was denied by the contracting officer and timely appealed to the Board, where it was docketed as CBCA 4148.

The parties engaged in alternative dispute resolution (ADR) on May 19 and 20, 2015, with the undersigned serving as the settlement judge. On May 20, 2015, the parties submitted a settlement agreement to the undersigned and jointly moved the undersigned to enter a judgment so that payment could be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2012). The Settlement Agreement states in part:

2. TERMS OF SETTLEMENT. In full settlement of the Controversies and the Appeal, Agency shall pay to Contractor the amount of \$165,000, which represents (1) \$0 for the demolition subcontractor replacement costs, (2) \$100,000 in unabsorbed home office overhead, and (3) \$65,000 in direct costs caused by the delay. Should such payment not be issued to Contractor within 60 days of the entry of this Agreement into judgment, simple interest on such amount shall accrue, beginning on the day after said date through the date payment is issued to Contractor, at the interest rate(s) published by the United States Secretary of the Treasury semi-annually for purposes of the Contract Disputes Act [CDA], 41 U.S.C. § 7109. Such interest shall be paid to Contractor along with payment of the aforesaid settlement amount.

. . . .

13. PAYMENT. The \$165,000 is to be paid from the United States Permanent Indefinite Judgment Fund as authorized by 31 U.S.C. § 1304 (2012). The parties jointly request that the Board enter a judgment pursuant to 41 U.S.C. §§ 7105(e) and 7108(b) and stipulate to entry of judgment as follows:

- a. Denying CBCA 4147 in its entirety.
- b. Granting CBCA 4148 in the amount of \$165,000 of principal, to include \$100,000 in unabsorbed home office overhead, and \$65,000 in direct costs.
- c. Granting interest, pursuant to the CDA, upon \$165,000 from 60 days after the entry of this Agreement into judgment through the date appellant receives payment from the Judgment Fund.

Decision

Accordingly, CBCA 4147 is **DENIED**. CBCA 4148 is **GRANTED IN PART**. In accordance with the parties' settlement agreement, the Board awards the sum of \$165,000 in CBCA 4148. The \$165,000 is to be paid, with interest starting sixty days after entry of this judgment and continuing until the date of payment, from the permanent indefinite judgment fund. 31 U.S.C. § 1304 (2012).

PATRICIA J. SHERIDAN
Board Judge

We concur:

H. CHUCK KULLBERG
Board Judge

JONATHAN D. ZISCHKAU
Board Judge