



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: April 4, 2016

CBCA 4353, 4543

KEVCON, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

William L. Bruckner and Jessica L. Mulvaney of Bruckner Law Firm, APC, San Diego, CA, counsel for Appellant.

David G. Fagan, Office of Regional Counsel, Department of Veterans Affairs, Portland, OR, counsel for Respondent.

Before Board Judges **GOODMAN**, **DRUMMOND**, and **WALTERS**.

WALTERS, Board Judge.

The Department of Veterans Affairs (VA) and Kevcon, Inc. (Kevcon) entered into a contract for construction of the Endoscopy and Central Processing Addition at Mann-Grandstaff VA Medical Center in Spokane, Washington. Kevcon submitted a claim for additional work performed and appealed a VA contracting officer's final decision denying the claim, which appeal the Board docketed as CBCA 4353. The VA contracting officer also terminated the contract for alleged default. Kevcon appealed the termination, and the Board docketed the appeal as CBCA 4543. The two appeals were subsequently consolidated.

Thereafter, the parties conducted alternative dispute resolution (ADR) proceedings, with Judge Richard C. Walters serving as their ADR neutral. They achieved a complete settlement through ADR and on March 29, 2016, executed a settlement agreement. Under the agreement, the VA, among other things, will convert the default termination to one for the convenience of the Government. Pursuant to the terms of the settlement agreement, counsel for the parties submitted a joint motion seeking a stipulated judgment pursuant to Board Rule 25(b) (48 CFR 6101.25(b) (2015)).

In their joint motion, they ask the Board to award to Kevcon the amount of \$950,000, in accordance with their settlement agreement, and per that agreement stipulate that payment of that amount to Kevcon be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2012), 41 U.S.C. § 7108, into the Bruckner Law Firm, APC Client Trust Account (Wire Routing Transit No. 121000248; Wells Fargo Bank, San Francisco, CA; Trust Account No. 1739080438; Tax ID No. 46-1957150). They further stipulate and agree that, if payment is not made to Kevcon in that manner by April 29, 2016, interest on the amount of the award will accrue beginning on that date until the date of payment at the rate(s) published by the United States Secretary of the Treasury semi-annually for purposes of the Contract Disputes Act, 41 U.S.C. § 7109 (CDA), and that such CDA interest shall be paid to Kevcon from the permanent indefinite judgment fund together with the award amount.

Under their settlement agreement and joint motion, Kevcon waives any claim to interest other than the aforesaid CDA interest beginning April 29, 2016, or to attorney fees or expenses it may have incurred in conjunction with its claims and appeals. Finally, the parties state that neither of them will seek reconsideration of, or relief from, the Board's decision awarding the stipulated amount under Rules 26 and 27, respectively, and neither party will appeal the Board's decision.

Decision

The appeals are **GRANTED IN PART**. The Department of Veterans Affairs shall convert the termination of default to one for the convenience of the Government and shall pay to Kevcon, Inc. the amount of \$950,000. Payment of this amount may be made in the manner stipulated, i.e., from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2012), 41 U.S.C. § 7108, into the Bruckner Law Firm, APC Client Trust Account (Wire Routing Transit No. 121000248; Wells Fargo Bank, San Francisco, CA; Trust Account No. 1739080438; Tax ID No. 46-1957150). If such payment is not received by April 29, 2016, CDA interest will accrue on the amount of the award until payment is made and will be paid to Kevcon, Inc., together with the amount of the award.

RICHARD C. WALTERS
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

JEROME M. DRUMMOND
Board Judge