



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: February 28, 2018

CBCA 2919, 2920, 2938, 3236, 3615, 4800, 4813, 5004

THE WHITING-TURNER CONTRACTING COMPANY,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Andrew W. Stephenson and Gregory H. Koger of Holland & Knight, LLP, Washington, DC, counsel for Appellant.

Stacey North-Willis and Eyvonne Alston, Office of General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **DRUMMOND**, and **KULLBERG**.

SOMERS, Board Judge.

On June 29, 2010, respondent, the Department of Veterans Affairs (VA), awarded a contract to The Whiting-Turner Contracting Company (Whiting-Turner). Whiting-Turner submitted a certified claim to the VA on March 25, 2013. Appellant thereafter appealed the final decision of October 31, 2013. That appeal is docketed as CBCA 3615 and subsequently consolidated with other appeals under the contract.

The parties elected to use alternative dispute resolution procedures (ADR) to attempt to resolve this dispute. As a result of mediation, the parties negotiated a partial stipulated settlement of CBCA 3615 and entered into a separate settlement agreement that details the terms of the partial settlement of the appeal.

On January 12, 2018, Whiting-Turner and the VA submitted to the Board a joint motion for partial judgment on stipulated settlement. Pursuant to the negotiated partial settlement of the appeal, the parties have settled Whiting-Turner's claim for extended general conditions and overhead costs extending from May 20, 2012, through August 11, 2017.

In addition to the extended general conditions and overhead costs actually incurred by Whiting-Turner, the partial settlement includes the settlement of the claims for extended general conditions and overhead costs through August 11, 2017, by the following Whiting-Turner subcontractors through August 11, 2017: (a) Lockheed Martin; (b) Radec Corp.; (c) Fingerlakes Construction Company; (d) Monroe Piping & Sheet Metal, LLC; and (e) Pooler Enterprises. The parties have agreed that Whiting-Turner and its subcontractors have reserved any potential claims for extended general conditions and overhead costs relating to any alleged compensable delays extending from August 12, 2017, through final completion of the project (or any portion thereof).

In the event that Whiting-Turner intends to pursue any claim for extended general conditions and overhead costs for alleged delays that took place from August 12, 2017, through final completion of the project, Whiting-Turner shall file an amended complaint in the appeal addressing the partial settlement and detailing the additional claimed costs. The parties have further agreed that the partial settlement of the appeal (a) does not settle any other appeals pending before the CBCA; (b) does not settle any existing or potential claims by Whiting-Turner seeking any direct costs (e.g., labor and materials); (c) does not settle the extended performance costs claimed by Whiting-Turner subcontractors Mohlin & Company and RMF Mechanical; and (d) does not settle any direct cost claims initiated by Lockheed Martin.

In their motion for partial judgment, the parties agree that they will not seek reconsideration or relief from the Board's decision awarding judgment and that they will not appeal the Board's decision.

Decision

The appeal in CBCA 3615 is **GRANTED IN PART**. In accordance with the parties' joint motion, the Board awards appellant, Whiting-Turner, the stipulated settlement amount of five million three hundred thousand dollars (\$5,300,000), plus interest as permitted by the Contract Disputes Act, 41 U.S.C. § 7109 (2012), through the date of payment, with payment to be made through the judgment fund in accordance with 31 U.S.C. § 1304 (2012) and 41 U.S.C. § 7108. As set forth in the settlement agreement, the parties have agreed that if the partial settlement is not received by Whiting-Turner on or before January 31, 2018, CDA interest will continue to accrue pending the issuance of the partial settlement payment to Whiting-Turner.

JERI KAYLENE SOMERS
Board Judge

We concur:

JEROME M. DRUMMOND
Board Judge

H. CHUCK KULLBERG
Board Judge