

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

GRANTED IN PART: October 17, 2000

GSBCA 15018, 15170

KAJIMA ENGINEERING & CONSTRUCTION, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Neil H. O'Donnell and Dennis G. Rolstad of Rogers, Joseph, O'Donnell & Quinn, San Francisco, CA, counsel for Appellant.

Robert C. Smith, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **GOODMAN**.

DANIELS, Board Judge.

Kajima Engineering & Construction, Inc. (KEC) constructed a federal building and courthouse in Reno, Nevada, under contract with the General Services Administration (GSA). KEC later submitted to the GSA contracting officer two claims, in the amounts of \$6,180,240.18 and \$1,100,380, for alleged costs associated with delay and impact resulting from alleged deficiencies in the design of the building. The contracting officer denied these claims and KEC appealed his decisions. The appeals were docketed as GSBCA 15018 and GSBCA 15170.

The parties agreed to submit these cases to alternative dispute resolution. In August 2000, in San Francisco, California, each side presented its position to a panel composed of three individuals: one executive from each party who had not previously had significant involvement with the contract, and the Board judge who is the chairman of the panel of judges assigned to the cases. The executives, with assistance from the judge and after consulting counsel and officials from the two parties, decided to settle the cases. On October

5, the parties entered into a settlement agreement, and on October 16, they filed with the Board a Joint Motion for Entry of Final Consent Judgment.

In the Joint Motion, the parties ask the Board --

to enter final judgment in favor of Appellant KEC requiring payment by GSA to KEC in the amount of \$3,000,000 for resolution of all outstanding disputes related to the Contract. Payment is to be made to KEC from the Judgment Fund in accordance with 31 U.S.C. § 1304 ([1994 & Supp. IV] 1998) and 41 U.S.C. § 612 ([1994 & Supp. IV] 1998).

The parties attached to their Joint Motion a settlement agreement. The settlement agreement includes this provision:

GSA shall pay interest to [KEC] at the rate established by the Secretary of the Treasury under section 12 of the Contract Dispute[s] Act of 1978 [41 U.S.C. § 612] on the \$3,000,000 if payment is not made by October 31, 2000. Any such interest on the judgment amount shall begin November 1, 2000, and accrue according to the Contract Disputes Act, until the United States pays the judgment amount, \$3,000,000.

The settlement agreement also provides that GSA will take action to recover from the project architect damages incurred by GSA attributable to the architect's fault, and that KEC will cooperate with GSA in any such actions. The agreement further states:

GSA promises to pay [KEC] \$100,000 from any judgment or settlement it actually receives and collects from the architect. GSA will be obligated to pay [KEC] under this Paragraph only to the extent of any recovery actually collected from the architect, and in any event shall have no obligation to pay [KEC] under this Paragraph any sum exceeding \$100,000.

The parties state, in the Joint Motion, that neither of them will seek reconsideration of or relief from the final judgment of the Board, and neither will appeal that judgment. The parties state additionally that upon entry of the final judgment, they will submit certificates of finality as to the decision.

Decision

As requested by the parties, the appeals are **GRANTED IN PART**. GSA shall pay to KEC the sum of \$3,000,000. If payment of this sum is not made by October 31, 2000, GSA shall also pay to KEC interest on the sum, at the rates set by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978, 41 U.S.C. § 612, beginning on November 1, 2000, and continuing until the principal amount is paid. This payment is to be made to KEC from the permanent indefinite judgment fund, 31 U.S.C. § 1304. Rule 136(e) (48 CFR 6101.36(e) (1999)).

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

ALLAN H. GOODMAN
Board Judge