

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

GRANTED IN PART: March 19, 2001

---

GSBCA 15421

HERMAN B. TAYLOR CONSTRUCTION CO.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Christina Stone of Gaughan & Stone, Houston, TX, counsel for Appellant.

Sharon J. Chen, Office of General Counsel, General Services Administration,  
Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK, NEILL**, and **HYATT**.

**BORWICK**, Board Judge.

1. The disputes at issue in this case arise under contract no. GS-07P-92-HUC-0017 (contract) between the General Services Administration (GSA) and Herman B. Taylor Construction Co. (HBT) for repairs and alterations to the United States Post Office and Courthouse Building in Galveston, Texas.

2. As required by the contract, HBT and The Ohio Casualty Insurance Company (Ohio) executed a performance bond in the penal sum of \$4,129,446 on or about June 30, 1992, and a payment bond in the penal sum of \$1,651,778.40, both of which named HBT as principal and GSA as obligee.

3. On June 10, 1994, GSA issued a contracting officer's final decision terminating the contract for default. Thereafter, GSA demanded that Ohio perform the work remaining under the contract.

4. HBT appealed the final decision to the Board; the appeal was docketed as GSBCA 12961.

5. On March 27, 1995, GSA and Ohio entered into a takeover agreement in which they agreed to allow Gantt Construction Company to complete the remaining contract requirements in satisfaction of the obligations of Ohio under the bond.

6. On June 8, 1995, GSA received from HBT a claim for equitable adjustment in the amount of \$554,202.51, seeking compensation for the following: (1) uncompensated extra work; (2) lost efficiency, including costs of unscheduled crew moves; (3) lost efficiency from changes in scope and sequence; (4) nonpayment of contract work performed from May 1 through June 10, 1994; (5) lost profits on work that HBT alleged it was prevented from performing as a result of the termination; (6) extended supervision resulting from GSA's failure to accept HBT's proposed schedule; (7) internal administrative and consulting costs; and (8) attorney fees and interest.

7. By letter dated July 1, 1996, the contracting officer denied HBT's claim for equitable adjustment.

8. On September 27, 1996, the Board docketed HBT's notice of appeal of GSA's denial of its claim for equitable adjustment as GSBCA 13884. HBT included with its notice of appeal a "Supplemental Claim" in the amount of \$283,101.08, representing the amount of Ohio's claim at that time against HBT for losses incurred by Ohio in connection with the payment of HBT's unpaid obligations and performance of the remaining work of the contract.

9. On December 8, 1997, Ohio filed a complaint in the United States District Court for the Southern District of Texas against HBT seeking (1) actual damages in the amount of \$346,424.52, plus any additional damages that Ohio may be entitled to recover under its indemnity agreement with HBT; (2) reasonable attorney fees; (3) pre- and post-judgment interest as allowed by law; (4) all costs of court; and (5) such other and further relief to which Ohio may show itself justly entitled to receive. The last category included what HBT had passed through as its "Supplemental Claim" (as described in the foregoing paragraph). The case is Ohio Casualty Insurance Co. v. Taylor, No. H-97-3990 (S.D. Tex. Jan 11, 1999).

10. On October 20, 1998, Ohio filed a motion for summary judgment in its case against HBT, and on January 11, 1999, the district court granted summary judgment in favor of Ohio against HBT and issued a final judgment in the total amount of \$342,963.76, plus post-judgment interest after January 11, 1999, at the rate of ten percent per annum.

11. On June 24, 1998, the Board upheld GSA's termination for default. Herman B. Taylor Construction Co. v. General Services Administration, GSBCA 12961, 98-2 BCA ¶ 29,836.

12. On February 15, 2000, the United States Court of Appeals for the Federal Circuit reversed the sole ground for the Board's sustaining the termination for default and remanded the case to the Board. Herman B. Taylor Construction Co. v. Barram, 203 F.3d 808 (Fed. Cir. 2000).

13. On June 20, 2000, the Board reversed GSA's termination for default and converted the termination for default to a termination for the convenience of the Government. Herman B. Taylor Construction Co. v. General Services Administration, GSBCA 12961-REM, 00-2 BCA ¶ 30,989.

14. On June 28, 2000, HBT submitted to the GSA contracting officer a termination for convenience settlement proposal of \$1,179,028.80 seeking, among other items, payment in the amount of \$391,316.95, plus pre- and post-judgment interest to cover the cost of the final judgment entered against HBT and in favor of Ohio by the United States District Court for the Southern District of Texas.

15. On September 6, 2000, the contracting officer rendered her decision on HBT's termination for convenience settlement proposal.

16. On October 5, 2000, HBT instituted a timely appeal at this Board from the contracting officer's decision on the termination for convenience settlement proposal. That appeal was docketed as GSBCA 15421.

17. The parties now desire to settle that portion of the appeal relating to HBT's claim for payment of the judgment entered in Ohio Casualty Insurance Co. v. Taylor, No. H-97-3990 (S.D. Tex. Jan. 11, 1999).

18. That portion of the appeal that relates to the claim against the Government for payment of the final judgment entered against HBT by the United States District Court for the Southern District of Texas is separate and distinct from the remaining issues in GSBCA 15421.

19. The parties have entered into an agreement to ask the Board to enter a stipulated award of \$357,252.74, inclusive of interest, costs, and attorney fees relating to HBT's claim

for payment of the final judgment entered by the United States District Court for the Southern District of Texas against HBT.

20. The parties stipulate that they will not seek reconsideration of, or relief from, this decision which relates to HBT's claim for payment of the final judgment entered by the United States District Court for the Southern District of Texas against HBT.

21. The parties stipulate that they will not appeal this decision.

Decision

The appeal is **GRANTED IN PART**. Pursuant to the stipulation of the parties and Rule 136(e), appellant is awarded \$357,252.74, inclusive of interest.

---

ANTHONY S. BORWICK  
Board Judge

We concur:

---

EDWIN B. NEILL  
Board Judge

---

CATHERINE B. HYATT  
Board Judge