

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

GRANTED IN PART: December 5, 2001

GSBCA 15694

MODERN CONTINENTAL SOUTH, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Todd R. Metz of Watt, Tieder, Hoffar & Fitzgerald, L.L.P., McLean, VA, counsel for appellant.

Sharon A. Roach, Office of Regional Counsel, General Services Administration, Washington, DC, counsel for respondent.

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

HYATT, Board Judge.

On October 19, 2001, appellant, Modern Continental South, Inc. (MCS), appealed the General Services Administration's (GSA's) contracting officer's denial of its consolidated claim for equitable adjustment and time extension under contract number GS-11P98MWC0003 for seawall replacement and remediation at the Southeast Federal Center in Washington, D.C. During performance of this contract certain disputes arose which gave rise to appellant's consolidated claim, which asserted that its total cost of performance had increased by some \$12,525,058 and that Government action and inaction had caused 375 days of delay.

On December 3, 2001, the parties filed a joint stipulation of settlement and award, together with a copy of the settlement agreement recently executed by the parties. The pertinent terms of the settlement agreement are as follows:

1. GSA agrees to extend the schedule for Contract performance through November 27, 2001, and MCS agrees to achieve substantial completion by November 27, 2001. Substantial completion is defined as the satisfactory completion of the placement of all structural concrete under the Contract.

2. GSA agrees that it will not commence the assessment of liquidated damages prior to December 16, 2001.

3. GSA agrees to pay MCS a total sum of \$6,300,000, which sum is inclusive of applicable fees and charges including, but not limited to Equal Access to Justice Act fees and costs, if applicable.

4. The settlement amount will be paid as follows:

a. The Contracting Officer will make a payment of \$372,500 through a contract modification . . . within ten (10) days after full execution of this Settlement Agreement.

b. Within two (2) business days of the full execution of this Settlement Agreement, the Parties will file the Joint Stipulation of Award and Settlement . . . , the Stipulation of Settlement . . . and their respective Certificates of Finality . . . with the GSBCA as required by GSBCA Rule 136(e). Within two business days of the date substantial completion is achieved, the Government shall submit a request for payment to the Department of [the] Treasury, Financial Management Service, pursuant to 31 U.S.C. § 1304 in the amount of \$5,927,500, plus applicable interest beginning December 1, 2001.

The parties have further agreed that they will not seek reconsideration of, or relief from, the Board's decision, and that they will not appeal the decision.

Decision

This appeal is **GRANTED IN PART** in accordance with the parties' settlement agreement. Rule 136(e) (48 CFR 6101.36(e) (2000)). The amount of \$5,927,500 plus applicable interest is to be paid from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2000). The remainder of the appeal, involving the amount of \$372,500 to be paid under a contract modification, is **DISMISSED AS SETTLED**.

CATHERINE B. HYATT
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

MARTHA H. DeGRAFF
Board Judge