



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

APPEAL REINSTATED;
GRANTED IN PART: October 21, 2008

CBCA 1381-REIN(1157)

BOISE BUILDING SOLUTIONS & MANUFACTURING, LLC,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Scott W. Horngren of Haglund, Kelley, Horngren, Jones & Wilder, LLP, Portland, OR, counsel for Appellant.

Benjamin R. Hartman, Office of the General Counsel, Department of Agriculture, Portland, OR, counsel for Respondent.

Before Judges **DANIELS** (Chairman), **GILMORE**, and **DRUMMOND**.

DRUMMOND. Board Judge.

On September 29, 2008, the Board issued an order dismissing with prejudice an appeal by Boise Building Solutions & Manufacturing, LLC, of a decision by a Department of Agriculture contracting officer. The appeal had been docketed as CBCA 1157. The order of dismissal was based upon the Board's understanding of the parties' joint submission dated September 26, 2008, stating that the appeal had been settled.

By letter dated September 30, 2008, the parties apologized to the Board for not making clear that they intended the settlement to be paid from the permanent indefinite judgment fund, 31 U.S.C. §1304 (2000), with interest from June 27, 2008, until paid. The

parties have requested that the Board replace the September 29, 2008, order of dismissal with a decision granting the appeal in part so that the settlement can be paid from the judgment fund. We treat this request as a motion to reinstate the appeal and grant it in part. We grant this motion.

Background

1. On June 8, 2005, the Department of Agriculture, Forest Service, (Forest Service) awarded the Paige Ridge Timber Sale Contract, number 070209, to Boise Building Solutions & Manufacturing, LLC (Boise).

2. On October 3, 2007, Boise submitted to the contracting officer a claim under this contract in the amount of \$177,684.

3. The contracting officer denied the claim. On April 24, 2008, Boise filed its appeal of this decision. The Board docketed the appeal as CBCA 1157.

4. On September 26, 2008, the parties informed the Board that they had entered into a settlement agreement, which they had signed on September 23, 2008.

5. On September 29, 2008, we issued an order dismissing CBCA 1157 with prejudice.

6. On September 30, 2008, the parties moved to replace the dismissal with a decision awarding Boise a stipulated amount, in order that Boise may obtain payment of the agreed sum from the permanent indefinite judgment fund. The parties stated that, in accordance with the terms of the settlement agreement, the Forest Service agreed to pay Boise \$75,000, plus simple interest calculated from June 27, 2008. They stated further that each party agreed to bear its own costs and attorney fees. Finally, the parties stated that the decision of the Board would be final and binding upon the parties, and not subject to further appeal.

Decision

CBCA 1157 is reinstated as CBCA 1381-REIN(1157).

This appeal is **GRANTED IN PART**. The Board awards the sum of \$75,000, plus simple interest at the Contract Disputes Act rate calculated from June 27, 2008. 41 U.S.C. §611. Payment shall be made from the permanent indefinite judgment fund. 31 U.S.C. §1304.

JEROME M. DRUMMOND
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

BERYL S. GILMORE
Board Judge