



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 8, 2010: GRANTED IN PART

CBCA 420, 450, 451, 1307, 1855

DICK/MORGANTI, A JOINT VENTURE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Kerry L. Kester and Joel D. Heusinger of Woods & Aitken, LLP, Lincoln, NE; Barbara G. Werther of Howrey LLP, Washington, DC; John W. Ralls of Howrey LLP, San Francisco, CA; and Richard T. Bowles and Kenneth G. Jones of Bowles & Verna LLP, Walnut Creek, CA, counsel for Appellant.

Thomas Y. Hawkins, Jay N. Bernstein, Lesley M. Busch, and Heather R. Cameron, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

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

BORWICK, Board Judge.

Background

These appeals involve claims for equitable adjustments arising out of a contract for construction of the San Francisco Federal Building under contract no. GS-09-P-02-KTC-0002. The parties to the contract are Dick/Morganti, a Joint Venture (D/M or appellant), and the General Services Administration (GSA or respondent).

Pursuant to Board Rule 25(b) (48 CFR 6101.25(b) (2009)), the parties have submitted a motion, dated September 30, 2010, for entry of a stipulated judgment. The parties stipulate to the award of \$27,667,001 plus interest, as described below.

Interest on \$26,000,000 shall be paid to appellant at the rates applicable pursuant to the Contract Disputes Act, from August 27, 2010 until paid. Interest on \$1,667,001, shall be paid to appellant at the rates applicable pursuant to the Contract Disputes Act, from April 25, 2008, until paid.

Subject to the reservations set forth below, the parties stipulate that upon the entry of the requested final judgment, all disputes, claims, counterclaims, and issues will be finally resolved relating to CBCA 420, 450, 451, 1307, and 1855.

The parties reserve the following:

(a) GSA's right to assert future claims for latent defects in the work on the project, but only for latent defects which are unknown to the GSA as of the date of the Settlement Agreement.

(b) GSA's right to assert future claims for any currently existing warranties, if any, set forth in the contract. GSA represents that it is not currently aware of any such warranty claims.

(c) D/M's indemnity obligations, if any, arising from prospective third party claims for personal injury or property damage related to the project. GSA represents that it is not currently aware of any such personal injury or property damage claims.

(d) GSA's rights, if any, with respect to work associated with alleged deficiencies in the following deficiency reports: DR 824 (Cut Steel and Rolling Gate), DR 784 (Core at Stair 8), DR 761 (Freestanding Walls at Levels 12-18), DR 781R1 (Skewed Anchor Bolts), and DR 620 (Stair 3, Shims & Grout at the Plates).

(e) GSA's rights arising from the terms of a separate agreement with Permasteelisa, a subcontractor of D/M, resolving a dispute concerning operation of the project's actuator/scrin panels (D/M Issue 2407, GSA Credit issue C104).

(f) Claims, damages and remedies arising from the breach of any of the obligations, covenants and warranties in the Settlement Agreement.

The matters reserved are not encompassed in any of the cases currently before the Board. If a claim arises with regard to any of these matters and an appeal ensues, that appeal will be docketed under a new CBCA number.

Pursuant to Rule 25(b) of the Board's Rules of Procedure, appellant and respondent certify that they will not seek review or reconsideration of judgment so rendered. With respect to the decision of the Board issued pursuant to the motion for stipulated judgment, appellant and respondent waive their rights to reconsideration under Rule 26, rights to relief from judgment under Rule 27, and rights to appeal the decision.

Decision

Pursuant to parties' motion for stipulated judgment, the Board **GRANTS THE APPEALS IN PART**. Appellant is awarded \$27,667,001, with interest on \$26,000,000 to be paid to appellant at the rates applicable pursuant to the Contract Disputes Act, from August 27, 2010, until paid and interest on \$1,667,001, to be paid to appellant at the rates applicable pursuant to the Contract Disputes Act, from April 25, 2008, until paid. Payment shall be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304.

ANTHONY S. BORWICK
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

ALLAN H. GOODMAN
Board Judge