



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 3, 2007

CBCA 541-ISDA

SOUTHCENTRAL FOUNDATION,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Barbara E. Karshmer and Mark St. Angelo of Karshmer & Associates, Berkeley, CA, counsel for Appellant.

Kathleen Bradley-Nader, Office of the General Counsel, Department of Health and Human Services, Seattle, WA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman) and **McCANN**.

McCANN, Board Judge.

Appellant, Southcentral Foundation (SCF), alleges that it is entitled to interest in the amount of \$44,672 for delay in the payment of \$2,464,882 in funds appropriated by Congress in the Fiscal Year (FY) 2006 Appropriation Act. The case is being decided, per the appellant's election, under the accelerated procedure. Rule 53 (72 Fed. Reg. 36,794, 36,808 (July 5, 2007)).

Facts

On December 20, 2004, the Indian Health Service (IHS) executed the Alaska Tribal Health Compact between Certain Alaska Native Tribes and the United States of America (Oct. 1, 1994 - Amended and Restated Oct. 1, 2003). Appeal File, Exhibit 4. On February 7, 2006, the IHS executed the Fiscal Year 2006 Funding Agreement (FA) between SCF and the Secretary of Health and Human Services. Appeal File, Exhibit 5. The Compact includes terms that “the parties intend shall control year after year,” and the FA describes the programs, services, functions and activities performed by the contracting tribe, as well as the funding levels available under the contract for the relevant year and the time and method for transferring the funds. 25 U.S.C. § 458aaa-4(b), (d) (2000).

The Compact provides in part:

Section 4 - Payment.

(a) Payment Schedule. Payment shall be made expeditiously and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. For each fiscal year covered by the Compact, the Secretary shall make available the funds specified for that fiscal year under the Funding Agreements by paying the respective total amount as provided for in each Funding Agreement in advance lump sum, as permitted by law, or such other payments as provided in the schedule set forth in each Funding Agreement. The first payment shall be made on or before ten calendar days after the date on which the Office of Management and Budget (hereinafter “OMB”) apportions the appropriations for that fiscal year for the programs, activities, functions and services subject to the Compact. The Prompt Payment Act, Chapter 39 of Title 31, United States Code, shall apply to the payment of funds due under this Compact and to each Funding Agreement negotiated thereunder.

Appeal File, Exhibit 4 at 11.

The FA provides in part:

Section 4 -Amounts Available in Fiscal Year 2006.

a) The following amounts are available to SCF pursuant to the Compact and Title V of the Indian Self-Determination and Education

Assistance Act, as amended, and are subject to reductions only in accordance with Section 508(d) of Title V and Section 106 of Title I.

1. Recurring Base	\$46,717,572
2. Non-recurring program funds	\$11,338,884
3. Area Tribal Share	\$ 1,898,533
4. Headquarters Tribal Share "TSA Formula"	\$ 1,374,115
5. Headquarters Tribal Share "Program Formula"	\$ 119,022
Total	\$61,448,126

Section 5 -- Method of Payment.

a) Payment Schedule. Except as provided in subsections b, c, and d of this section, all funds identified in Section 4 of this FA shall be paid to SCF, in accordance with Article II, Section 4(a) of the Compact; payment shall be made as follows:

One payment in lump sum to be made annually in advance by check or wire transfer.

b) Availability of Tribal Shares. SCF will be paid 100 percent of the negotiated FY 2006 Headquarters and Area Tribal Shares in its initial lump sum payment.

.....

d) Periodic Payments. Payment of funds otherwise due to SCF under this FA, which are added or identified after the initial payment is made, shall be made promptly upon request of SCF by check or wire transfer.

Section 6 -- Adjustments

a) Adjustments Due to Congressional Actions. The parties to this FA recognize that the total amount of the funding in this FA is subject to adjustment due to Congressional action in appropriations Acts or other law affecting availability of funds to the IHS and the Department of Health and Human Services. Upon enactment of any such Act or law, the amount of funding provided to SCF in the FA shall be adjusted as necessary, after SCF

has been notified of such pending action and subject to any rights which SCF may have under this FA, the Compact, or the law.

....

Section 11 -- Amendment or Modification of this Agreement.

....

d) Due to Availability of Additional Funding. SCF shall be eligible for any increases in funding or funding for Medicaid, Medicare, maintenance and improvement, other reimbursement and new programs for which it would have been eligible had it been administering programs under a self-determination contract, rather than under the Compact and this FA, and for any other funds that are not restricted by appropriations language for which any Alaska tribe or tribal organization may be eligible, including any new funds appropriated for IHS Headquarters and funds passed to Alaska Area as recurring or non-recurring funds, and this FA shall be amended to provide for timely payment of such new funds to SCF. Such amendment shall be originated and prepared within 30 days by the Alaska Area Office and executed through the Area Office in consultation with SCF.

Appeal File, Exhibit 5 at 20, 23, 25.

On October 7, 2005, SCF received an advance lump sum payment of \$57,744,574 pursuant to the SCF's FA. Complaint ¶ 9; Answer ¶ 9. On or about March 3, 2006, SCF received payment of \$2,464,882, which was the portion of the money appropriated to SCF in the FY06 Appropriations Act for alcohol control, enforcement, prevention, treatment, sobriety and wellness, and education in Alaska (special alcohol funds). Appeal File, Exhibit 2; Complaint ¶ 10; Answer ¶ 10. SCF alleges that it should have received both these payments at the same time. By letter dated June 28, 2006, SCF filed a claim in the amount of \$44,672 for late payment of the special alcohol funds by IHS. Appeal File, Exhibit 2.

Discussion

Summary relief is appropriate when the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The parties agree that there are no material facts in dispute in this case. The issues in dispute here involve contractual, statutory, and regulatory interpretation.

Such issues are matters of law that can be appropriately decided by summary relief. *Santa Fe Pacific Railroad Co. v. United States*, 294 F.3d 1336, 1340 (Fed. Cir. 2002).

SCF contends that it is entitled under the Compact and the FA to be paid the special alcohol funds on the same date that it is paid the advance lump sum payment (October 7, 2005). SCF, however, does not contend that the special alcohol funds are a part of the advance lump sum payment. IHS agrees that the special alcohol funds are not part of the advance lump sum payment. However, it contends that, unless these funds are a part of the advance lump sum payment, IHS is under no obligation to pay these funds on the same date. SCF has pointed to no specific provision in the Compact or the FA that it contends requires the payment of the special alcohol funds at the same time as the advance lump sum payment.

We are mindful of the well-settled principles of contract interpretation. We begin with the plain language of the contract. “A contract is read in accordance with its express terms and the plain meaning thereof.” *C. Sanchez and Son, Inc. v. United States*, 6 F.3d 1539, 1543 (Fed. Cir. 1993). “We must interpret [a contract] as a whole and ‘in a manner which gives reasonable meaning to all its parts and avoids conflict or surplusage of its provisions.’” *United International Investigative Services v. United States*, 109 F.3d 734, 737 (Fed. Cir. 1997) (citing *Granite Construction Co. v. United States*, 962 F.2d 998, 1003 (Fed. Cir. 1992)); see also *Dalton v. Cessna Aircraft Co.*, 98 F.3d 1298, 1305 (Fed. Cir. 1996); *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

Subsection 4(a) of the Compact states that “the Secretary shall make available the funds specified . . . under the Funding Agreements by paying the respective total amount . . . in advance lump sum . . . or such other payments as provided in the schedule.” Subsection 4(a) of the FA specifically sets forth the amounts that the Secretary is required to pay in the advance lump sum payment.¹ The amount specified did not include special alcohol funds. The total amount set forth in subsection 4(a) of the FA was timely paid.

The Compact and the FA only require the funds set forth in subsection 4(a) of the FA to be paid by advance lump sum payment. Section 5(a) of the FA states that “all funds identified in Section 4 of this FA shall be paid to SCF, in accordance with Article II, Section 4(a) of the Compact” Section 4(a) of the FA specifically identifies the amounts to be included in the advance lump sum payment, and it does not include the special alcohol

¹ The amount, \$61,448,126, shown in subsection (a) of “Section 4 - Amounts Available in Fiscal Year 2006” was reduced appropriately to \$57,744,575 by the Secretary in accordance with Section 508(d) of Title V and Section 106 of Title I. There is no dispute between the parties that the \$57,744,575 was the correct amount paid to SCF in the initial lump sum payment, excluding the special alcohol funds. Complaint ¶ 9; Answer ¶ 9.

funds or any other funds. Furthermore, section 5(a) of the FA specifically refers back to subsection 4(a) of the Compact. Under accepted rules of contract interpretation, the specific takes precedence over the more general. *Hol-Gar Manufacturing Co. v. United States*, 351 F.2d 972, 980 (Ct. Cl. 1965). Accordingly, the better reading of subsection 4(a) of the Compact is that the phrase “total amount provided in each funding agreement” is limited to the amounts set forth specifically in subsection 4(a) of the FA, and does not include other unidentified amounts that might be included in the FA.

In any event, SCF does not contend that the special alcohol funds should be a part of the advance lump sum payment and has pointed to no Compact or FA provision that requires the payment of the special alcohol funds at the same time as the advance lump sum payment. Furthermore, subsection 5(d) of the FA anticipates that payments “otherwise due” will be made “after the initial payment is made.” The special alcohol funds payment may fall into this group of payments which are “otherwise due.” Hence, we find that SCF’s claim, that the special alcohol funds must be paid at the same time as the advance lump sum payment, lacks merit.

In the alternative, SCF argues that, under section 11(d) of the FA, if the special alcohol funds are not required to be paid at the same time as the advance lump sum payment then they must be paid within thirty days of receipt of the lump sum payment. This argument also lacks merit. This subparagraph only requires that the amendment pertaining to “additional funding” or “increased funding” shall be originated and prepared within thirty days by the Alaska Area Office. After that, it must be executed through the Area Office in consultation with SCF. This paragraph does not speak to when payment should be made. Accordingly, it does not require payment of the special alcohol funds to SCF within thirty days of payment of the lump sum payment.²

Decision

The appeal is **DENIED**.

R. ANTHONY McCANN
Board Judge

² The Board makes no determination as to whether the special alcohol funds fall within the definition of “additional funding” or “increased funding” as used in this paragraph. The facts submitted to the Board by the parties are insufficient to make such a determination.

I concur:

STEPHEN M. DANIELS
Board Judge