

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

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GRANTED IN PART: April 20, 2004

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GSBCA 15984, 16147, 16148, 16314

THE CLARK CONSTRUCTION GROUP, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Michael Evan Jaffe, Barbara G. Werther, John W. Ralls, Ronan J. McHugh, Jason C. Tomasulo, and Michelle R. Copeland of Thelen Reid & Priest LLP, Washington, DC; and R. Steven Holt of The Clark Construction Group, Inc., Bethesda, MD, counsel for Appellant.

Dalton F. Phillips, Jeremy Becker-Welts, Catherine Crow, and Richard Hughes, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **DeGRAFF**.

**DANIELS**, Board Judge.

Under a contract with the General Services Administration (GSA), The Clark Construction Group, Inc. (Clark) built an office and laboratory complex to serve as the Environmental Protection Agency Research and Administration Facility at Research Triangle Park, North Carolina.

Difficulties arose during the construction, and Clark and GSA both made claims for money resulting from those problems. Clark appealed to the Board four GSA contracting officer decisions regarding those claims:

GSBCA 15984 is an appeal of a contracting officer's deemed denial of a Clark certified claim in the amount of \$64,316,648. Clark alleged that the incomplete and/or inadequate design issued by GSA's design team, along with the failure of that team to coordinate an inordinate number of changes among the various design

disciplines, required Clark and its subcontractors to perform the project work in a manner not anticipated at bid time and consequently to incur significant increased costs. This claim includes most of those alleged increased costs.

GSBCA 16147 is an appeal of a contracting officer's decision denying a Clark certified claim in the amount of \$2,677,539. The claim covers increased costs allegedly incurred to remedy problems resulting from the settlement of soil and the development of cracks in concrete slabs. The problems were said to be due to a differing site condition and the Government's breach of its warranty of complete plans and specifications.

GSBCA 16148 is an appeal of a contracting officer's decision assessing liquidated damages against Clark in the amount of \$22,040,000 and withholding \$4,250,000, the value of most of the unpaid contract balance and retainage, from payments to the contractor.

GSBCA 16314 is an appeal of a contracting officer's decision denying in large part a Clark certified claim for payment for work which was described in 157 separate change orders proposed by Clark. The total amount of the claim was \$16,722,253. Clark challenges in this appeal the contracting officer's decision as to proposed change orders Clark valued at \$8,759,276. The appeal does not cover other matters addressed in the decision – the few items as to which the contracting officer granted the claim; proposed change orders encompassed within GSBCA 15984 and GSBCA 16147; and the contracting officer's assertion of liquidated damages, which is encompassed within GSBCA 16148.

On April 14, 2004, GSA filed a motion for a stipulated award. The motion asks the Board to enter judgment for Clark, as to the four appeals, in the amount of \$23,125,000. The motion further asks that the Board's order provide that this amount include interest up to June 3, 2004; that if any or all of the amount is not paid by June 3, interest accrue on such unpaid balance at the rate provided by the Contract Disputes Act of 1978, 41 U.S.C. § 611 (2000); that any accrued interest be paid with the final payment of the judgment amount; and that only \$22,000,000 of the judgment amount be paid from the permanent indefinite judgment fund in accordance with 31 U.S.C. § 1304. The motion additionally contains a stipulation that neither party will seek reconsideration or relief from a decision which incorporates these provisions, and that neither party will appeal such a decision.

On April 15, 2004, Clark filed a statement consenting to GSA's motion.

Later on April 15, GSA asked the Board orally to hold in abeyance any action on the motion. On April 20, GSA withdrew that request.

### Decision

The Board adopts by decision the provisions of GSA's motion of April 14. The appeals are each **GRANTED IN PART**. GSA shall pay to Clark the sum of \$23,125,000. Of this amount, \$22,000,000 shall be paid from the permanent indefinite judgment fund, 31 U.S.C. § 1304. To the extent that any of the total amount of \$23,125,000 is not paid by

June 3, 2004, interest, at the rate provided pursuant to 41 U.S.C. § 611, shall accrue from June 4, 2004, until the total amount and all outstanding interest thereon are paid. Rule 136(e) (48 CFR 6101.36(e) (2002)).

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STEPHEN M. DANIELS  
Board Judge

We concur:

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EDWIN B. NEILL  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge