

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Parsons-UXB Joint Venture) ASBCA No. 58907
)
Under Contract No. N62742-95-D-1369)

APPEARANCES FOR THE APPELLANT: Thomas A. Lemmer, Esq.
Christopher W. Myers, Esq.
McKenna Long & Aldridge LLP
Denver, CO

Pamela G. Chin, Esq.
Counsel
Parsons Corporation

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
Robert C. Ashpole, Esq.
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MELNICK

On 1 August 2013, the Board sustained in part the appeal of Parsons-UXB Joint Venture (JV) in ASBCA No. 56481. The JV had performed the above-referenced contract with the United States Navy to remove unexploded bombs. The Board ruled that the JV was entitled to recover Hawaii General Excise Taxes (GET) paid by the JV and its partners after they settled disputes over those taxes with the State. Certain components of the final calculation of quantum were remanded to the parties to determine. *Parsons-UXB Joint Venture*, ASBCA No. 56481, 13 BCA ¶ 35,378.

On 17 September 2013, the JV filed a motion requesting final judgment in the amount of \$3,815,746.82 plus CDA interest. Consistent with its practice, the Board assigned a new docket number to this quantum proceeding, which is now ASBCA No. 58907. The Board permitted the government 30 days to respond to the motion, and allowed the JV 15 days to reply. Having considered all of the submittals, we now rule that the JV is entitled to recover \$3,815,746.82, plus CDA interest.

FINDING OF FACT

Absent any objection from the government, we find that the GET rate paid by the JV and its partners upon gross business receipts is 4.712 percent (R4, tab 291 at 7142; app. supp. R4, tab 509 at 7132, 9203).

DECISION

The Board's earlier decision ruled the JV is entitled to recover \$295,008.34 in reimbursement of its own GET settlement. It also ruled that the JV is entitled to recover \$1,865,556 in GET paid by its partner, Parsons Infrastructure and Technology Group, Inc. (Parsons) in its settlement, plus the GET Parsons will pay on that amount. The JV is entitled to recover \$721,055.81 in GET paid by its partner, UXB International, Inc. (UXB) in its settlement, plus the GET UXB will pay on that amount. Additionally, the JV is entitled to recover the GET it will also pay on that total recovery. Separately, the JV is entitled to recover \$133,581 in legal fees it incurred, \$41,544.97 in legal fees Parsons incurred, and \$495,594.57 in legal fees UXB incurred. *Parsons-UXB*, 13 BCA ¶ 35,378 at 173,597-98.

The JV has demonstrated that the GET rate applicable to both it and its partners is 4.712 percent (finding). Thus, Parsons will pay \$87,905 in GET on its \$1,865,556 settlement recovery. UXB will pay \$33,976.15 in GET on its \$721,055.81 settlement recovery. Added to the JV's own settlement recovery of \$295,008.34, these figures total \$3,003,501.30. The JV will then pay \$141,524.98 in additional GET on that figure, dictating that its total GET recovery is \$3,145,026.28. Adding this amount to the legal fees listed above totals \$3,815,746.82.

The Navy does not take issue with these figures or the rate used to calculate them. Its only response to the JV's request for judgment is to accuse the JV of pursuing an untimely motion for reconsideration of the Board's earlier decision. Nothing in the JV's request seeks any revision or modification of the earlier decision. Instead, it appropriately seeks a final calculation of the JV's recovery based upon that decision's rulings. In the absence of any other objection from the Navy, we grant appellant's motion.

CONCLUSION

This appeal is sustained. The JV is entitled to recover \$3,815,746.82, plus interest under 41 U.S.C. § 7109 from 28 November 2007.

Dated: 2 December 2013



MARK A. MELNICK
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



JACK DELMAN
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 58907, Appeal of Parsons-UXB Joint Venture, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals