

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
 [REDACTED]) ASBCA No. 60783
)
 Under Contract No. H92237-16-C-0025)

APPEARANCE FOR THE APPELLANT: [REDACTED]
President

APPEARANCES FOR THE GOVERNMENT: Jeffrey P. Hildebrant, Esq.
Air Force Deputy Chief Trial Attorney
Christopher S. Cole, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MELNICK
ON THE GOVERNMENT'S MOTION TO DISMISS

On May 12, 2016, SOJTF-A (BAF) Contracting Office, Bagram Airfield, Afghanistan, awarded [REDACTED] ([REDACTED]) the firm-fixed-price contract identified above to provide enhanced force protection and facility upgrades at Hamid Karzai International Airport (R4, tab 1). The contract's total price was 14,963,033.10 AFN (*id.* at 3). Section G of the contract provided that the official exchange rate would be "AFN 68.45 = 1 USD" (*id.* at 4). The contract also included Clause 5152.232-5900, which provided for payment in local currency (*id.* at 5).

The government terminated the contract for default. Subsequently, [REDACTED] submitted a certified claim to the contracting officer on July 8, 2016, seeking \$119,432 for trucks, materials and storage costs. (R4, tab 9 at 2; gov't mot. ¶¶ 7, 11) That claim was denied in a contracting officer's final decision dated September 5, 2016 (R4, tab 8). This appeal is from that decision. [REDACTED] October 24, 2016 complaint reiterates its demand for \$119,432.

On March 4, 2017, the parties executed Modification No. P00002 to the contract. The modification converted the termination for default to one for convenience and provided for \$93,700/6,413,765 AFN (at the 68.45 AFN = 1 USD exchange rate) as a "Claim Settlement." It also stated that "[t]he Contractor hereby agrees to dismiss [this appeal] within 30 days." (Gov't mot., attach. 1) After some delay, government payment records state that on November 21, 2017, it paid [REDACTED] 6,517,828.29 AFN, which is more than the amount agreed upon (gov't mot., attach. 2).*

* The record does not explain why the payment was for more than what was specified in Modification No. P00002.

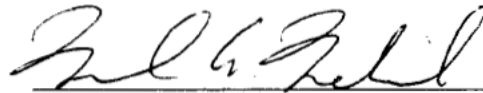
payment confirmation, ██████ responded on November 28 that changes in the exchange rate during the delay entitle it to an additional \$4,300 (gov't mot., attach. 3).

DECISION

The government now moves to dismiss the appeal on the ground that it has been settled and ██████ agreed to its dismissal. ██████ does not dispute those points. Nor does it deny that it received 6,517,828.29 AFN in payment. ██████ merely repeats its claim to an additional \$4,300 without providing a reason. Assuming ██████ continues to believe that it is entitled to more compensation due to an alleged change in the exchange rate, nothing in Modification No. P00002 supports that conclusion. Payment of the agreed upon amount was to be made at a fixed exchange rate in Afghan currency. There is nothing providing for additional compensation in dollars in the event the market exchange rate changed after the passage of time before payment.

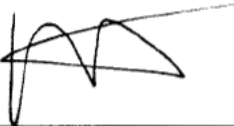
The government seeks dismissal of the appeal based upon its release by ██████. "A release is a contract whereby a party abandons a claim or relinquishes a right that could be asserted against another." *Holland v. United States*, 621 F.3d 1366, 1377 (Fed. Cir. 2010). ██████ agreement in Modification No. P00002 to dismiss this appeal in return for the government's conversion of the termination to one for convenience, and payment of the agreed upon sum, constitutes a release. Given ██████ release of its claim, there is nothing more to decide in the appeal and it is therefore dismissed with prejudice.

Dated: 8 February 2018



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

I concur



RICHARD SHACKLEFORD
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
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. 60783, Appeal of [REDACTED], rendered in conformance with the Board's Charter.

Dated:

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