



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: August 28, 2012

CBCA 2453, 2560

PRIMETECH,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Chizoma Onyems, President of Primetech, Rancho Cucamonga, CA, appearing for Appellant.

Scott M. Dalton and Michael D. Kiffney, Office of the Chief Counsel, Transportation Security Administration, Department of Homeland Security, Arlington, VA, counsel for Respondent.

Before Board Judges **SOMERS**, **POLLACK**, and **KULLBERG**

KULLBERG, Board Judge.

Respondent moves to dismiss CBCA 2453 and 2560 with prejudice. Appellant, Primetech, and the Transportation Security Administration (TSA), an agency within the Department of Homeland Security, executed a settlement agreement, and TSA has made payment according to the terms of that agreement. That settlement agreement required the parties to jointly move for dismissal of these appeals with prejudice upon their compliance with the terms of the agreement. Primetech opposes respondent's motion and urges the

Board to ignore the settlement agreement. For the reasons stated below, the appeals are dismissed with prejudice.

Background

On September 16, 2009, the TSA's contracting officer awarded to Primetech contract HSTS02-09-P-CAN367 (contract) in the amount of \$95,000 to provide a shelter for an explosives storage magazine at the San Francisco International Airport. On May 6, 2011, the contracting officer terminated the contract for cause. Primetech appealed the termination to the Board, and the appeal was docketed as CBCA 2453 on June 8, 2011. Subsequently, Primetech submitted a certified claim to the contracting officer in the amount of \$102,723. The contracting officer denied the claim, and Primetech appealed the denial of its claim. This appeal was docketed as CBCA 2560 on September 15, 2011. The Board consolidated the two appeals. Formal proceedings in these appeals followed, but the parties then elected to attempt to resolve these appeals informally.

The parties jointly requested that the Board's Chairman appoint a mediator to conduct an alternative dispute resolution proceeding, and by letter dated June 8, 2012, a mediator was appointed. The mediator conducted discussions with both parties, and they reached a settlement. TSA and Primetech executed a settlement agreement, which was signed by Primetech's representative on July 9, 2012, and by the contracting officer on July 12, 2012. The agreement provided the following in pertinent part:

4. Terms and Conditions. Following discussion by the Parties to resolve this dispute through settlement, and to avoid the delay and uncertainty of litigation of these claims, the Parties desire to enter into an agreement that would settle, compromise, and resolve all issues and disputes between the Parties regarding the Contract, and hereby mutually agree to the following terms of this Agreement:

a. Within 7 business days of the Effective Date of this Agreement, TSA agrees to pay Primetech a sum of \$30,000.00, all of which shall be remitted by Primetech to Primetech's subcontractor, Nkechinere. TSA shall issue a check jointly to Primetech and Nkechinere, with Primetech endorsing the check and presenting it to Nkechinere. Primetech shall provide evidence to TSA of its endorsement within 2 business days of receiving payment.

b. Primetech agrees to withdraw the Primetech Claim and effectuate a dismissal with prejudice before CBCA of the Primetech Claim and terminate any further rights under the Contract and agrees further to seek no additional compensation from TSA under the Contract, whether the grounds for such compensation were included in the Primetech Claim or otherwise.

c. TSA agrees to withdraw the TSA Claim and effectuate a dismissal with prejudice before CBCA of the TSA Claim and terminate any further rights under the Contract and agrees further to seek no additional compensation from Primetech under the Contract.

d. It is expressly understood and agreed between the Parties that this Agreement and the promises and releases provided herein are not, and shall not be construed to be, an admission of liability or acknowledgment of the validity of any of the claims or defenses which were or which could have been asserted by the Parties.

* * *

7. Release. Upon execution of this Agreement:

a. Primetech does irrevocably and unconditionally, completely and forever release and discharge any and all claims or demands, losses, costs (including but not limited to attorneys' fees), damages, actions, causes of action, whether in law or equity, suits and administrative proceedings that Primetech can or may bring, based on or relating to the Contract, arising, occurring, or existing at any time prior to, the date of this Agreement, whether known or unknown, against the TSA and, as applicable, against each of its agencies and departments, including but not limited to the Department of Homeland Security (DHS), its officials, employees, agents, attorneys, predecessors and successors in interest, and legal representatives, both foreign and domestic.

b. TSA does irrevocably and unconditionally, completely and forever release and discharge any and all claims or demands, losses, costs (including but not limited to attorneys' fees), damages, actions, causes of action, whether in law or equity, suits and administrative proceedings that TSA can or may bring, based on or relating to the Contract, arising, occurring, or existing at any time prior to, the date of this Agreement, whether known or unknown, against Primetech and, as applicable, against each of its subsidiaries, parents, affiliates, directors, officers, employees, agents, attorneys, and successors in interest, and legal representatives, both foreign and domestic.

On July 16, 2012, FSA issued a check to Primetech and Nkechinere in the amount of \$30,000. The check was endorsed, and Nkechinere acknowledged receipt of payment by letter dated July 21, 2012. TSA moved to dismiss CBCA 2453 and 2560 with prejudice on August 1, 2012. In its motion, TSA stated that all terms of the settlement agreement had been met.

Primetech's August 2, 2012, response to TSA's motion urged the Board to "ignore" TSA's motion to dismiss and stated that "[r]espondent has not fully met the terms of agreement as reached." In its opposition, Primetech alleged that it had requested that "TSA go into system [and] remove default . . . or send . . . letter stating that default was no longer applicable." Primetech further alleged that "[r]espondent notified Appellant on 7/31/2012 that his contracting officer . . . would not accept terms as reached that default still stands."

Discussion

The issue before the Board is whether the parties have complied with the terms of the settlement agreement such that a dismissal with prejudice is the appropriate disposition of these appeals. It is a matter within this Board's jurisdiction to determine whether an appeal has been settled. *Coastal International Security, Inc. v. Department of Homeland Security*, DOT BCA 4528, et al., 06-2 BCA ¶ 33,385, at 165,509. A settlement agreement is binding on the parties and "bars further recovery on the issues raised or referred to in it directly or by reference, absent mutual mistake or duress." *Toole Construction Co.*, HUD BCA 79-439-C49, 81-2 BCA ¶ 15,318, at 75,866 (citing *Beard v. United States*, 67 F. Supp. 963, 965 (Ct. Cl. 1946)). In a settlement "each party gives up something in order to terminate the dispute without further litigation." *Asberry v. United States Postal Service*, 692 F.2d 1378, 1381-82 (Fed. Cir. 1982). A party to a settlement agreement who "voluntarily accepted the settlement and its benefits . . . is equitably estopped to attack it." *Id.* at 1382.

Under the terms of the settlement agreement, the payment of \$30,000 by TSA to Primetech was consideration for the mutual release of all other claims, which included Primetech's appeal of the termination for cause and its claim in the amount of \$102,723. Similarly, TSA gave up any claims against Primetech related to the termination for cause, which would have included procurement costs. In accordance with the settlement, TSA made payment of \$30,000, which Primetech accepted and, in turn, paid to its subcontractor. The agreement is clear and unambiguous in resolving all claims related to both appeals. There is no evidence of mutual mistake or duress in the parties' negotiation and execution of the settlement, and Primetech has alleged neither of those defenses. The settlement agreement leaves no issues to be adjudicated under these appeals, and, therefore, dismissal with prejudice is the proper disposition. *See Toole Construction Co.*, 81-2 BCA at 75,867.

Primetech argues that FSA's contracting officer has not complied with the terms of the settlement agreement because the termination for cause has not been removed from the Government's records. It is well established that "a supplemental agreement entered into between a contractor and the government operates as a bar to all claims not specifically reserved." *Fraass Surgical Manufacturing Co. v. United States*, 505 F.2d 707, 712 (Ct. Cl. 1974). "Similarly, there is no ambiguity in language which states that a payment to the contractor 'constitutes the entire equitable adjustment due the contractor.'" *Id.* (quoting *Cannon Construction Co. v. United States*, 319 F.2d 173, 176 (Ct. Cl. 1963)). Primetech errs in suggesting that the settlement agreement required that the contracting officer take any action with regard to the termination for cause. The settlement agreement between Primetech and FSA provided only for the payment of \$30,000, and there was no provision for any relief with regard to the termination for cause. Having agreed to the terms of the settlement agreement, Primetech gave up all other claims related to the contract.

Finally, Primetech asserts that in the "[s]ettlement agreement and as in [the] mediation both parties agreed claims as well as default claims (2453, 2560) shall be dropped." This Board has held that "when 'a detailed contract is executed by the parties, it will be presumed to represent their complete undertakings and is conclusive and in derogation of any prior understandings.'" *Navigant SatoTravel v. General Services Administration*, CBCA 449, 09-1 BCA ¶ 34,098, at 168,604 (quoting *Schoeffel v. United States*, 193 Ct. Cl. 923, 934 (1971)). Primetech's assertion that relief from the termination for cause was discussed during the mediation does not alter the terms of the written settlement agreement. The only agreement that is relevant to this matter is the written settlement agreement that was executed by the parties, and, as discussed above, that agreement did not affect the termination for cause of Primetech's contract. Regardless of whether Primetech believed that the settlement agreement provided relief from the termination for cause, that belief cannot alter the terms of the settlement agreement.

Decision

The appeals are **DISMISSED WITH PREJUDICE.**

H. CHUCK KULLBERG
Board Judge

We concur:

JERI K. SOMERS
Board Judge

HOWARD A. POLLACK
Board Judge