



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: December 16, 2015

CBCA 2775, 4445

McALLEN HOSPITALS LP, dba
SOUTH TEXAS HEALTH SYSTEM,

Appellant,

v.

DEPARTMENT of VETERANS AFFAIRS,

Respondent.

Jeffrey Weinstein of The Weinstein Law Group, PLLC, Washington, DC, counsel for Appellant.

Mary A. Mitchell and Bart Evans, Office of Regional Counsel, Department of Veterans Affairs, Houston, TX, counsel for Respondent.

Before Board Judges **POLLACK, DRUMMOND, and LESTER.**

LESTER, Board Judge.

On April 9, 2009, appellant, McAllen Hospitals LP, doing business as (dba) South Texas Health System (STHS), entered into a contract with respondent, the Department of Veterans Affairs (DVA), through which STHS would provide general medical and hospital services for veterans in the Lower Rio Grande Valley region in south Texas.

Subsequently, disputes arose regarding the amount of the payments that STHS should receive under the contract. On or about April 4, 2011, STHS submitted a formal claim to the contracting officer (CO) stating that the DVA had not applied the appropriate Medicare rates when paying hospital (institutional) claims and physician (professional) claims between April 6 and September 30, 2009, and that STHS was entitled to recover \$77,870.24 in underpayments. On June 1, 2011, STHS sent a second formal claim to the CO claiming \$976,603.66 in underpayments between October 1, 2009, and September 30, 2010. On March 13, 2012, STHS timely appealed the CO's final decisions on both the April 4, 2011, claim (docketed as CBCA 2775) and the June 1, 2011, claim (docketed as CBCA 2774), but, by decision dated October 2, 2014, we dismissed CBCA 2774 for lack of jurisdiction. *McAllen Hospitals LP v. Department of Veterans Affairs*, CBCA 2774, et al., 14-1 BCA ¶ 35,758, at 174,969-71. STHS subsequently submitted a new claim to the CO seeking to recover the alleged underpayments for the period from October 1, 2009, to September 30, 2010, and we docketed the appeal associated with that claim as CBCA 4445. We then consolidated CBCA 2775 and 4445.

The parties subsequently entered negotiations to attempt amicably to resolve their dispute. They have informed the Board that they have settled their dispute and have provided the Board with a copy of a settlement agreement that became effective on September 21, 2015. In the agreement, the parties indicate that they will file a joint motion requesting that the Board, pursuant to Board Rule 25(b) (48 CFR 6101.25(b) (2015)), enter a stipulated judgment in the amount of \$816,000 as full and complete compensation for all costs, direct and indirect and including all accrued interest, with each party to bear its own attorney fees and expenses. The parties further state in the agreement that neither party will seek reconsideration of, or relief from, the Board's decision under Board Rules 26 or 27, respectively, and that neither will appeal the Board's decision.

Although the settlement agreement indicates that the parties will file a joint motion seeking entry of a stipulated judgment, the parties have never filed such a motion. Nevertheless, in response to an inquiry from the Board, the parties have indicated that they wish the Board to enter the stipulated judgment described in the settlement agreement.

Decision

CBCA 2775 and 4445 are **GRANTED IN PART**. In accordance with the parties' stipulation, the Department of Veterans Affairs shall pay to McAllen Hospitals LP, dba South Texas Health System, \$816,000, with each party to bear its own costs, attorney fees, and

expenses. This payment may be made from the permanent indefinite judgment fund, 31 U.S.C. § 1304 (2012).

HAROLD D. LESTER, JR.
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

JEROME M. DRUMMOND
Board Judge