

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-219706.2

August 18, 1986

David W. Mockbee, Esquire
Jones, Mockbee, Bass & Hodge
1080 Flynt Drive, Suite E
Jackson, Mississippi 39208

Re: Claim No. Z-2854140(2), Fortec Constructors, et al. v. The
United States, in the United States Claims Court; No. 85-83C

Dear Mr. Mockbee:

This responds to your demand for payment of interest on the judgment in the above-referenced case. As explained below, this Office currently cannot certify the requested interest payment because a controversy which may be litigated still exists between the United States and your client regarding its entitlement to the interest claimed.

The judgment in question resolved Contract Disputes Act^{1/} claims submitted by Fortec under a construction and demolition contract it had with the Coast Guard. While the action was pending, the parties entered into a written agreement to settle the matter by stipulating to the entry of a judgment for the plaintiff in the amount of \$105,000. Paragraph 4 of the stipulation states, "Plaintiff waives and abandons any and all claims against the United States, or its officers, agents, or employees, arising out of the matters and facts involved in this case." Paragraph 8 says:

"Plaintiff warrants and represents that it has pending no other action or suit against the United States or its officers, agents, or employees with respect to its claim herein nor will it cause any such action to be filed in or submitted to any other court, administrative agency, or legislative body, including but not limited to the General Accounting Office.* * *"

Pursuant to this stipulation, the Claims Court entered its judgment, dated October 25, 1984, in favor of Fortec for the agreed amount. There was no mention of interest in either the stipulation or the judgment. The judgment was paid following the usual procedures. We issued our settlement certificate on March 5, 1985, in the amount of \$105,000 and the check was sent on March 11.

Subsequently, by letter dated April 9, 1985, you demanded post-judgment interest on the \$105,000 citing 31 U.S.C. § 724(a) (now 31 U.S.C. § 1304)

^{1/} Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613.

and 28 U.S.C. § 2516(b). In a second letter, you again requested "post-judgment" interest but this time on the basis of section 12 of the CDA, 41 U.S.C. § 611, and other authorities.^{2/} Your submission indicates that Fortec is claiming interest under section 12 only from the date of the settlement to the date of payment.

Following Fortec's initial demand, the Department of Justice advised this Office that it objected to the payment of interest in this case. The Department contended that Fortec is not entitled to interest because the settlement agreement established as a sum certain the amounts due with respect to the issues then in dispute between the parties, and since the agreement made no provision for the payment of interest, none was owing. Further, the Department maintained that the settlement agreement was based on the Government's abandonment of counterclaims against Fortec, and represented the release of funds which the Government had previously withheld under the contract, rather than payment on account of Fortec's claim.

In a letter sent to us in response to the Department's arguments, you disputed the points the Department raised. You maintained that the settlement agreement represents a resolution of the disputes set forth in the complaint. You asserted that the complaint was not just for contract amounts withheld by the Government, but also for extra work performed, additional costs incurred and time extensions. Also, citing several Contract Appeals Board decisions, you argued that the fact that the dispute was settled does not preclude the recovery of interest. Finally, you asserted that since the settlement agreement and judgment are silent with respect to interest, interest is allowable under section 12.

As the matter now stands, it is inappropriate for this Office to take any further action. Fortec's claim raises the issue of the application section 12 in relation to the specific release provisions of the settlement agreement, a matter on which the parties appear to be in dispute. Further litigation may be necessary to resolve the meaning and effect of the release provisions with respect to section 12. Since the dispute stems from a Government contract, and since the settlement agreement resulted from litigation brought under the Contract Disputes Act, we think the matter is more appropriately resolved under the procedures provided in that Act. Accordingly, unless and until Fortec's entitlement to

^{2/} Section 12 provides: "Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim * * * from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

interest is determined in accordance with the CDA, there is no basis for us to certify any further payment.

Sincerely yours,

A handwritten signature in cursive script that reads "Rolley Efros". The signature is written in dark ink and is positioned above the typed name.

(Mrs.) Rollee H. Efros
Associate General Counsel