

GOVERNMENT OF DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

FT. MYER CONSTRUCTION)	
)	CAB No. D-859
Under Contract No. 1028-62)	

CLARIFICATION OF DECISION AND ORDER^{1/}

On November 3, 1992, the Board issued a decision in the matter captioned above, which sustained the appeal and remanded the matter to the contracting officer for payment to the appellant in the amount of \$82,207.95. The remand to the contracting officer made no mention of payment of interest.

By letter dated March 3, 1993 (filed March 5, 1993), appellant advised the Board that while the government subsequently issued a change order in the amount of \$82,207.92 in compliance with the Board's decision, the amount of the change order did not include interest payable in accordance with D.C. Code §§ 1-1188.6 and 28-3302(b) (1987).

Attached to appellant's letter of March 3, 1993, is a copy of a letter dated March 2, 1993, from the chief of the agency's litigation section to appellant's general counsel. Therein, the agency's counsel stated that the issue of interest is not an independent claim but is "subsumed" in the claims that were decided by the Board. Counsel went on to state that because the Board's decision was final and made no award of interest, the government would not pay interest.

First, we consider appellant's letter of March 3, 1993, as a request for clarification of the Board's November 3, 1992, decision. Second, we agree with appellant that we should issue a clarification forthwith in order to avoid litigation.

In our view, appellant is correct: interest is payable on appellant's claim in accordance with D.C. Code §§ 1-1188.6 and 28-3302(b). The statutory language is clear and unambiguous in that payment of interest on amounts found due a contractor is mandated, notwithstanding the fact that the Board's decision made no mention of such payment.^{2/} The government's assertion, made without benefit of legal or factual support, that interest was "subsumed"

^{1/}Administrative Judge Benjamin B. Turner did not take part in this decision due to an extended illness.

^{2/}It was by virtue of this statutory mandate that the Board did not include an order concerning payment of interest in its monetary award to appellant.

- 2 -

in the appellant's claim evinces a clear misunderstanding of the law.

Consequently, it is hereby

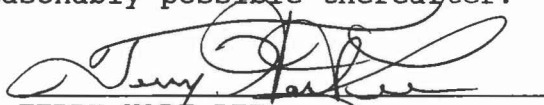
ORDERED, that the Board's decision of November 3, 1992, be, and the same is, **CLARIFIED** to read:

"Consequently, in accordance with this decision, this case is **REMANDED** to the contracting officer for payment to appellant in the amount of \$82,207.92^{3/}, plus interest in accordance with D.C. Code §§ 1-1188.6 and 28-3302(b)";

and it is

FURTHER ORDERED, that the amount of interest payable be agreed to by and between the parties in accordance with applicable law and that payment be made as soon as reasonably possible thereafter.

DATE: March 12, 1993


TERRY HART LEE
Administrative Judge

CONCUR:


ZOE BUSH
Chief Administrative Judge

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^{3/}There is no change to footnote 27 in the original decision.