



United States Department of State

Washington, D.C. 20520

February 25, 2021

James E. Wall  
General Manager-International  
Caddell Construction Company

[REDACTED]  
[REDACTED]  
[REDACTED]

Subject: Caddell Liability for Incorrect Location of New Office Building (NOB), Ashgabat New Embassy Compound (NEC), Contract No. SAQMMA-14-C0193 (Contract)—Intent to Issue Contracting Officer Final Decision

Dear Mr. Wall:

This letter responds to your October 22, 2020 letter to me. My letter to you dated August 26, 2020 set forth the basis of a potential claim by the Department of State against Caddell for additional costs estimated as \$95 to \$125 million that will be incurred by the Department in completing the New Office Building (NOB) on the new U.S. Embassy New Embassy Compound in Ashgabat due to failure to meet Government of Turkmenistan (GOT) setback requirements. Your letter outlines Caddell's position with respect to this potential claim.

In exploring this potential claim, we have followed the recommendation of the Department's Office of the Inspector General (OIG). OIG premised Caddell's liability for these additional costs primarily on Caddell's failure to obtain required construction permits from the Turkmen Government prior to initiating construction and its failure to verify that necessary permits had been obtained. In your 20-page response, you argue that the Department waived compliance with the contractual requirements that Caddell obtain necessary building permits. You assert a number of factual and legal defenses, including inter alia: 1) reference to communications from the Department that Caddell purportedly understood as assurances that all required permits had been obtained; 2) Caddell's inability to communicate directly with or obtain guidance from local authorities, who would deal only with USG officials; 3) Assertions that the Department had superior knowledge; 4) A broad assertion that the Government is estopped from making claims against Caddell; 5) Assertions that the Department failed to mitigate additional costs by taking prompt remedial action when the Turkmen Government stopped work on the NOB in July 2016.

After full consideration of the defenses presented by Caddell, the Department still concludes that the failure of Caddell to obtain a construction permit was the proximate cause of the Turkmen Government's stop work order. As stated in our August 26 letter, the Department does not agree that the contractual provisions placing on Caddell the responsibility to obtain required permits or

verify that they had been obtained were waived either by other provisions of the contract or by any communications from the Department to Caddell. Caddell moved forward with construction of the NOB without the requisite construction permits and without conducting the investigation required by the contract to identify what permits were required. On or about July 22, 2016, OBO notified Caddell to obtain the necessary construction permit(s) from the Local Government authorities. Project records indicate that construction activity on the NOB halted on or about August 9, 2016.

The estimated costs of remediation of the NOB location error have mounted over time as implementation of a resolution has been delayed by unsuccessful efforts at a diplomatic resolution, by consideration of alternative approaches, and by lack of available funding. The total cost of remediating the error in the placement of the NOB by rebuilding the new NOB in an approved location will now cost the Department of State between \$90 million and \$125 million. We strongly believe that some share of this additional cost should be borne by Caddell.

Regardless of our disagreement on these issues, we must in any event move forward now that funding is available. The Department intends to issue an RFP for remedial work to Caddell in the near future and it is our hope that the liability issues we have raised can be amicably resolved in the price negotiations for this additional work. To the extent we are unable to resolve these issues, any remaining affirmative Government claims that are in dispute would be presented to the contracting officer for final decision under the Contract Disputes Act. Such final decisions must be issued within six years of claim accrual, which the Department believes would require issuance of a decision by July 2022. The contracting officer's decision would assess the Government's claim as a sum certain, but for the present we refrain from stating a specific monetary demand in the hope that discussion of the issues in the context of the RFP price negotiation will allow both sides to agree on an appropriate quantum.

No response to this letter is necessary and you may expect to receive the RFP for remedial work within a few weeks. Any further correspondence should be sent to me at [REDACTED].

Sincerely yours,

[REDACTED]

Contracting Office