



State of North Carolina

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North Carolina Senate President Pro Tempore Marc Basnight
North Carolina House of Representatives Speaker James Black
North Carolina House of Representatives Speaker Richard T. Morgan
Co-Chairs, Joint Legislative Commission on Governmental Affairs

Senator Scott Thomas
Representative Bill Culpepper
Representative Joe L. Kiser
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

Re: *N.C. Monroe Construction Company v. The State of North Carolina; The Office of State Budget and Management and Marvin K. Dorman, Jr., in his capacity as State Budget Director v. Dewberry & Davis, and Miller Building Corporation*, 98 CVS 6173, (Wake County Superior Court).

Gentlemen:

We have been requested to provide a report on the settlement reached in the above-referenced litigation.

On May 22, 1998, plaintiff N.C. Monroe Construction Company, ("Monroe") filed suit against the State of North Carolina, the Office of State Budget and Management, and former State Budget Officer Marvin Dorman in his official capacity for damages allegedly resulting from the State's failure to pay Monroe pursuant to two contracts entered into by Monroe and the Office of State Budget and Management. These contracts, one executed in 1990, the other in 1991, followed legislation enacted by the General Assembly on 16 July 1990 (Chap. 935, North Carolina Session Laws of 1989) authorizing the issuance of \$200 million in bonds for prison construction. Monroe was hired under these contracts to serve as "program manager" for the construction of prisons financed by these bonds.

Because of questions raised concerning execution of the first contract prior to voter approval of the bond referendum, the second contract was executed between the State and Monroe in 1991 establishing Monroe as program manager for the bonds. The contract established a basic fee of two per cent (2%) of the total legislative appropriation to finance the bonds *plus* a two point three per cent (2.3%) mark up for the total cost of the program. As of 1993, all but \$87.5 million of the bond issue was appropriated and constructed.

Monroe was paid in full for this portion of the work. On 24 July 1993, however, the General Assembly transferred to the Department of Administration, Office of State Construction, the authority to contract for construction for the remaining prisons to be built under the 1990 bond program. (Chap. 550, Session Laws of 1993). Therefore, Monroe was not allowed to act as program manager for the remaining \$87.5 million dollars of the 1990 bond program and was denied its basic fee and mark up for that portion of its contract.

Monroe asserted in its lawsuit that the State breached the contracts by failing to pay Monroe its basic fee and mark up on the entire \$200 million bond program. The trial court granted the State's Motion for Summary Judgment but, on appeal, the Court of Appeals reversed the trial court and entered summary judgment for Monroe. (COA01-1478, filed 31 December 2002). The Court of Appeals concluded that the 1991 contract between the State and Monroe, which the Court held to be a valid contract, covered the entire \$200 million bond program, and the General Assembly's transfer of program management authority from Monroe to the Department of Administration, did not invalidate Monroe's contract. The Supreme Court of North Carolina denied the State's petition for certiorari.

Under the Court of Appeals' decision, the case was remanded to the trial court solely for a determination of damages. Monroe's claim of damages totaled \$6,690,602.02 which included the basic fee, mark up and interest. The Attorney General's Office, in conjunction with Office of State Budget and Management, subsequently settled Monroe's judgment for \$3,702,125.00. The settlement amount comprised the basic fee and mark up on \$87,500,000.00, without interest. The State and Monroe agreed to payment of the settlement amount in two lump sums: the first was paid on December 22, 2003 and totaled \$2,000,000.00. The balance is due on or before January 20, 2004.

Very truly yours,

Grayson G. Kelley
Chief Deputy Attorney General

GGK/sf

cc: Nels Roseland
Greg McLeod
Chloe Gossage