

ARMED SERVICES BOARD OF CONTRACT APPEALS

Petition of --)
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Fluor Federal Solutions, LLC) ASBCA No. 61431-983
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Under Contract No. N69450-12-D-7582)

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APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
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Assistant Director
Todd J. Wagnon, Esq.
Trial Attorney

ORDER PURSUANT TO RULE 1(a)(5)
DIRECTING CONTRACTING OFFICER TO ISSUE DECISION

Pursuant to Board Rule 1(a)(5), Fluor Federal Solutions, LLC (Fluor) petitions the Board to direct the contracting officer (CO) to render a decision on its 30 September 2016 claim for \$50,584,810 plus interest, and modification of specific Navy evaluations included in the Contractor Performance Assessment Reporting System (CPARS) by 8 January 2018.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE PETITION

1. On 13 December 2011, the Navy (government) awarded Contract No. N69450-12-D-7582 to Fluor for regional base operations support in Jacksonville, FL. The contract requires Fluor to provide base operations support services at four Navy installations in the Jacksonville area. (Pet. at 1)

2. On 30 June 2015, Fluor submitted a consolidated request for equitable adjustment (consolidated REA) seeking an adjustment to the price of the contract and modification of Navy evaluations included in the CPARS (pet. at 2). The 96 page consolidated REA included a detailed narrative of the facts giving rise to the REA and was accompanied by 70 attachments and 2 appendices (pet. at 3). The consolidated REA addressed matters that had all been raised in a series of separate REAs that Fluor

submitted in 2013 and 2014, which the Navy either rejected with little or no comment, or failed to address at all (pet. at 2).

3. Seven months later, the Navy, on 3 February 2016, denied Fluor's consolidated REA, stating that additional information provided in the REA submission had not warranted the government to reverse its original denials of the earlier REAs. Fluor then submitted its consolidated claim on 30 September 2016. (Pet. at 3-4)

4. After acknowledging the consolidated claim, the Navy stated it would require a Defense Contract Audit Agency (DCAA) audit and that a decision would be issued on or before 28 April 2017 (pet. at 4). Beginning in November 2016 through 15 May 2017, Fluor organized and participated in multiple in-person meetings and telephone conferences requested by DCAA regarding the claim, and provided written responses to DCAA's written requests (pet. at 5).

5. By letter dated 14 April 2017, the Navy notified Fluor that it was awaiting completion of the DCAA audit, estimated to be finished by 31 July 2017, and "other reviews to process the claim." It further stated it anticipated a contracting officer's final decision (COFD) would be issued by 1 December 2017. (Pet. at 5)

6. DCAA did not contact Fluor between 15 May and 21 September 2017 (pet. at 5).

7. By 21 September 2017 email, DCAA repeated requests to which Fluor had already responded in writing on 20 January and 15 March 2017 (pet. at 5).

8. Fluor responded to DCAA's request on 25 September 2017, repeating its previous responses, which explained it did not maintain certain records in the manner DCAA requested and expressed Fluor's willingness to answer specific questions regarding the data used to price the claim and provide DCAA an additional walkthrough of the data (pet. at 5).

9. Without responding to Fluor's 25 September 2017 reply, DCAA issued a "Formal Request for Access to Records" on 23 October 2017, asserting it had "not received access to contractor records" (pet. at 5).

10. Fluor repeated, in a letter to DCAA dated 31 October 2017, its earlier offers to respond to any DCAA concerns, as Fluor had provided all of the information available and was willing to meet with DCAA representatives. DCAA never responded. (Pet. at 5)

11. By letter dated 8 November 2017, the Navy again notified Fluor that it was awaiting the audit "and other independent analyses to complete [its] evaluation" of the

consolidated claim. It also stated that it “anticipate[s] issuing a COFD” by 2 March 2018.” (Pet. at 6)

12. DCAA informed Fluor on 22 November 2017 that it would be canceling its audit of the claim (pet. at 6).

GOVERNMENT CONTENTIONS

The Navy contends that Fluor is largely responsible for the CO’s inability to issue a final decision and Fluor should not be rewarded for this behavior. The Navy states that Fluor had joined in a motion to stay a related appeal because an “audit was needed” for the CO to issue a decision on the consolidated claim. (Gov’t resp. at 1) The Navy also argues that Fluor has refused to provide DCAA access to all relevant factual data (*id.* at 2).

PETITIONER’S CONTENTIONS

Fluor asserts that the Navy incorrectly describes the parties’ joint motion for a stay in the related appeal. According to Fluor, the CO informed Fluor that an audit of the consolidated claim was needed. Fluor questions the need of an audit to evaluate the factual and legal bases of the claim in order to reach a decision on entitlement. Fluor maintains an audit is only necessary at this stage if the Navy intends to issue a decision in its favor. (Pet. reply at 4-5)

Fluor also disagrees with the Navy’s assertions that it has not cooperated with DCAA. Fluor contends its claim provides a detailed explanation of the methodology used to calculate each quantum element, and it has provided additional data to DCAA on 26 October and 22 December 2016. Fluor also organized and participated in multiple in-person meetings and telephone conferences requested by DCAA, and has provided written responses to all of DCAA’s written requests. (Pet. reply at 5)

According to Fluor, DCAA has requested data and reports organized in a specific format that is inconsistent with how Fluor ordinarily maintains the data and according to the FAR, is under no obligation to create records for DCAA (pet. reply at 5-6).

Fluor emphasizes that the Navy has had more than two years since the submission of its consolidated REA, on 30 June 2015, to develop its position on entitlement. During this time, Fluor asserts that it has made numerous attempts to meet with Navy representatives to discuss the claim but has been rebuffed and that it has made every reasonable accommodation in responding to DCAA inquires, but has no obligation to reorganize its records or to create records to suit DCAA. Fluor further contends that the Navy has not provided a date for completion of the purported

“independent analyses” or issuance of a COFD, and cannot continue to confer extensions on itself. (Pet. reply at 7)

DECISION

When a CO receives a certified claim over \$100,000, the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, requires that within 60 days of receipt of the claim, the CO shall either (a) issue a decision or (b) notify the contractor of the time within which a decision would be issued. 41 U.S.C. § 7103(f)(2).

Additionally, the CDA also requires that the decision of the CO on a contractor claim “shall be issued within a reasonable time...taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.” 41 U.S.C. § 7103(f)(3). Whether the time in which a CO states he or she will issue a decision is reasonable must be determined on a case by case basis. *Eaton Contract Services, Inc.*, ASBCA Nos. 52686, 52796, 00-2 BCA ¶ 31,039 at 153,273 (finding 8 months reasonable given the volume of documentation, number of issues and time needed to gather information due to relocation of personnel); *Defense Systems Co.*, ASBCA No. 50534, 97-2 BCA ¶ 28,981 at 144,326-27 (finding 9 months reasonable when claimed amount exceeded \$71 million and a narrative portion of the claim alone exceeded 162 pages); *Dillingham/ABB-SUSA, a Joint Venture*, ASBCA Nos. 51195, 51197, 98-2 BCA ¶ 29,778 at 147,557 (finding 14-16 months unreasonable for a small construction claim and an impact claim that had been extensively analyzed and audited).

Here, the consolidated claim is clearly large and complex. However, the Navy has had the information regarding the consolidated REA and claim for over two years. Given the history and number of promised COFDs and the present situation where it is unclear when the CO will be issuing a final decision, it seems the parties have reached a stalemate which most likely will not be broken by agreement.

Accordingly, the Board hereby directs the CO to issue a decision on the contractor’s claim by 31 January 2018.

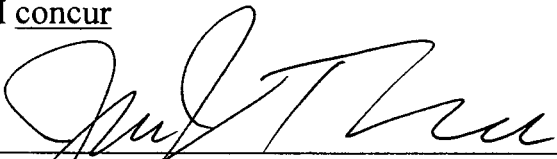
This Order completes all necessary action by the Board. If the CO fails to comply with this Order, such failure will be deemed a decision by the CO denying the claim, and the contractor may appeal to this Board or sue in the United States Court of Federal Claims pursuant to the Contract Disputes Act, 41 U.S.C. §§ 7103(f)(5) and 7104.

Dated: 28 December 2017



KENNETH D. WOODROW
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



JOHN J. THRASHER
Administrative Judge
Chairman
Armed Services Board
of Contract Appeals

I concur



MARK A. MELNICK
Administrative Judge
Acting Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Order Pursuant to Rule 1(a)(5) of the Armed Services Board of Contract Appeals in ASBCA 61431-983, Petition of Fluor Federal Solutions, LLC, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals