

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Eaton Contract Services, Inc.) ASBCA Nos. 52686 and 52796
)
Under Contract Nos. DACA21-95-C-0165)
DACA21-96-C-0009)

APPEARANCE FOR THE APPELLANT: Mr. Glen L. Eaton
President

APPEARANCES FOR THE GOVERNMENT: Frank Carr, Esq.
Engineer Chief Trial Attorney
Connie Ledford Baran, Esq.
James R. Thornton, Jr., Esq.
Engineer Trial Attorneys
U.S. Army Engineer District,
Savannah

OPINION BY ADMINISTRATIVE JUDGE WILLIAMS
ON THE GOVERNMENT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION

Appellant filed a notice of appeal from the contracting officer's failure to issue a decision on a 24 January 2000 claim. This appeal was docketed as ASBCA No. 52686. The Government filed a motion to dismiss, asserting that appellant's notice of appeal is premature. Appellant replied in opposition. Subsequent to the Government's motion to dismiss, appellant filed a notice of appeal on 31 May 2000 from a 6 March 2000 claim which the Board docketed as ASBCA No. 52796.

STATEMENT OF FACTS

1. In 1995, the Army awarded Eaton Contract Services, Inc. ("ECS"), Contract No. DACA21-95-C-0165 to construct a training facility at Fort Bragg, North Carolina (R4, tab 3).

2. By letter dated 24 January 2000, ECS filed a certified claim (Claim 1) under the contract seeking \$159,266 plus over \$2,000,000 in consequential damages. The contracting officer received the claim on 25 January 2000. (R4, tab 5, Gov't mot. at 2)

3. The submitted claim, approximately 1,530 pages, was in four notebooks. Volume 1 contained an introduction, summary of issues, spreadsheets, method of calculation of damages and 30 claim issue narratives. Volumes 2, 3, 4, and 5 were a continuation of the claim issue narratives. (R4, tab 5)

4. Within 60 days of receipt of the 24 January 2000 claim, by letter dated 10 March 2000, the contracting officer advised ECS that the claim was “being reviewed for merit.” The contracting officer further advised that she “expected to have a final decision no later than 1 September 2000.” (R4, tab 2)

5. The contracting officer selected 1 September 2000 as the decision date based on “the number of issues involved as well as a unusually high workload.” (R4, tab 2)

6. On 20 March 2000, ECS filed a notice of appeal from the contracting officer’s failure to issue a final decision. The Board docketed ECS’ appeal as ASBCA No. 52686. ECS stated in its appeal that the contracting officer’s 10 March 2000 letter “unreasonably delay[ed] the contracting officer’s Final Decision.” ECS also pointed out that “the contracting officer waited 45 days before advising that the Corps needed an additional six (6) months in which to render the decision which is scheduled by the Disputes Clause to reasonably require only 60 days.” (R4, tab 1)

7. ECS’ notice of appeal also requested that the Board docket an appeal from the deemed denial of a 6 March 2000 claim under Contract No. DACA21-96-C-0009 (Claim 2) (R4, tab 1). The amount of the claim was \$117,592 plus more than \$2,000,000 in consequential damages. This claim was properly certified. It consisted of five separate issues and two notebooks of supporting documentation. The claim was received by the Government on 8 March 2000. (Gov’t mot. at 4, Affidavit of Lucy J. Lanier at 2)

8. In a letter dated 24 April 2000, the contracting officer advised ECS that a decision on Claim 2 would be issued by 1 August 2000. (Gov’t mot. at 4)

9. The Government filed a motion to dismiss for lack of jurisdiction, dated 26 April 2000, asserting that the appeal in ASBCA No. 52686 was premature. The Government contends that notification of the decision dates regarding Claim 1 and Claim 2 were timely since they were sent to ECS within 60 days of receipt of the claim and that decision dates less than eight and four months respectively from receipt of the contracting officer’s final decision were reasonable. (Gov’t mot. at 4)

10. Attached to the Government’s motion was an affidavit from the contracting officer setting forth the reasons for the final decision dates. The decision dates were based on the volume of documents submitted in support of each claim and the time needed to research and analyze this information. Further, she indicated that part of her

research and analysis included locating personnel familiar with the contracts who had been reassigned to other positions and forwarding documentation to them for their analyses. After gathering the necessary information and data, she and her claims manager would then have to conduct independent analyses of the claims. The contracting officer also stated that if the claims were determined to have merit, she would need additional time to negotiate a fair and reasonable settlement with ECS. (Affidavit of Lucy J. Lanier at 2)

11. ECS filed a response on 11 May 2000 opposing the Government's motion to dismiss.

12. On 31 May 2000, appellant filed a notice of appeal from the contracting officer's 24 May 2000 letter responding to appellant's 6 March 2000 claim (Claim 2). The 24 May 2000 letter was a preliminary evaluation of the claim. In the letter, the contracting officer asked that appellant raise questions or schedule a meeting to present additional information by 30 June 2000. Further, she indicated if she did not hear from appellant by 30 June 2000 she would be issuing a final decision on the claim. (ASBCA 52796, Bd. corr. file)

DECISION

Claim 1

ECS argues that the contracting officer's 10 March 2000 letter "unreasonably delay[ed] the contracting officer's Final Decision." ECS noted that "the contracting officer waited 45 days before advising that the Corps needed an additional six (6) months in which to render the decision which is scheduled by the Disputes Clause to reasonably require only 60 days." (R4, tab 1)

Section 605 (c) (2) of the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-603, as amended, requires the contracting officer, within 60 days after receipt of a claim over \$100,000 to either (a) issue a decision or (b) notify the contractor of the time in which a decision will be issued. (41 U.S.C. § 605(c)(2) (A) and (B))

The contracting officer received Claim 1 on 25 January 2000. Within 60 days thereafter, ECS was advised that the contracting officer expected to have a final decision no later than 1 September 2000.

We now turn to the issue of whether the 1 September 2000 date is reasonable.

Section 41 U.S.C. § 605 (c)(3) of the CDA states:

The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, 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.

We have found that “[if] the claim is substantial and will require a long period of time to address, then the contracting officer’s only option is to fix a date far enough into the future to assure a complete evaluation,” *Defense Systems Company, Inc.*, ASBCA No. 50534, 97-2 BCA ¶ 28,981 (citing *Aerojet General Corp.*, ASBCA No. 48136, 95-1 BCA ¶ 27470 quoting *Boeing Co. v. United States*, 26 Cl. Ct. 257, 259 (1992)). Given the volume of documentation provided by ECS in support of its claim, number of claim issues and quantity of time needed to gather information as a result of relocation of personnel familiar with the claim, we conclude that eight months is a reasonable period of time in which to render a final decision. *Dillingham/ABB-SUSA, a Joint Venture*, ASBCA No. 51195 and 51197, 98-2 ¶ 29,778 relied upon by ECS, is distinguishable. In that case, we found that 14-16 month periods established by the contracting officer for issuance of decisions were unreasonable. However, the facts in *Dillingham/ABB-SUSA, a Joint Venture*, differ from those in the instant appeal. In *Dillingham/ABB-SUSA, a Joint Venture*, one of the claims was a relatively small, straightforward construction claim and the second impact claim had been extensively analyzed, with the benefit of an audit. Here, there are 30 separate claim issues and no evidence indicating that an extensive analysis or audit has been conducted. Further, the Government’s decision date extends over a period of less than eight months, which is a reasonable time period in which to render a final decision.

Claim 2

ECS also requested in its notice of appeal in ASBCA No. 52796 that the Board docket an appeal from the deemed denial of its 6 March 2000 claim under Contract Number DACA21-96-C-0009 (Claim 2). (R4, tab 1) The Government asserts that the appeal is likewise premature as it was filed before a decision or notice of a decision date had been issued. (Gov’t mot. at 4)

Subsequent to the filing of ECS’ notice of appeal, the contracting officer advised ECS on 24 April 2000 that a decision would be issued on the 6 March 2000 claim by 1 August 2000. (Gov’t mot. at 4) Further, by letter dated 24 May 2000, the contracting officer provided a preliminary evaluation of the claim and asked that appellant respond with questions or requests to present additional information by 30 June 2000. She also indicated if she did not hear from appellant by 30 June 2000, she would be issuing a final decision on the claim. As the contracting officer notified ESC within 60 days of receipt

of the claim of the time in which a decision will be issued, 41 U. S. C. § 605(c)(2)(B) has been satisfied.

ECS also has stated that the decision date of 1 August 2000 is unreasonable. Similar to the reasons provided by the contracting officer in Claim 1, the 1 August 2000 decision date was based on the volume of documents submitted in support of the claim as well as the logistical challenges in researching and analyzing the claims as a result of reassignment of personnel and relocation of offices.

We conclude that four months or less is a reasonable period of time to issue a final decision in order to assure a complete evaluation given the documentation provided by ECS supporting the claim and the logistical needs of the Government to research and analyze the claim. *Defense Systems Company, Inc.*, ASBCA No. 50534, 97-2 BCA ¶ 28,981 (citing *Aerojet General Corp.*, ASBCA No. 48136, 95-1 BCA ¶ 27,470, quoting *Boeing Co. v. United States*, 26 Cl. Ct. 257, 259 (1992)). Therefore, a decision date of 1 August 2000 for Claim 2 is in keeping with the requirements of 41 U.S.C. § 605(c)(3) of the CDA.

Accordingly, we grant the Government's motion and dismiss the appeals for lack of jurisdiction.

Dated: 20 July 2000

PAUL WILLIAMS
Administrative Judge
Chairman
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

MARK N. STEMLER
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

RONALD JAY LIPMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 52686 and 52796, Appeals of Eaton Contract Services, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals