

ARMED SERVICES BOARD OF CONTRACT APPEALS

Petition of --)
)
Jaynes Corporation) ASBCA No. 59453-947
)
Under Contract No. W912PL-09-C-0010)

APPEARANCE FOR THE PETITIONER: Judith Ward Mattox, Esq.
Colorado Springs, CO

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
John F. Bazan, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Los Angeles

OPINION BY ADMINISTRATIVE JUDGE STEMPLER

Jaynes Corporation petitions the Board, under Board Rule 1(a)(5), for an order directing the contracting officer (CO) to issue a decision on its 16 May 2014 claim no later than 29 August 2014. In response, the government indicates that the CO will issue a contracting officer's final decision (COFD) by no later than 12 September 2014. We have jurisdiction over this matter pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 7101-7109.

STATEMENT OF FACTS FOR PURPOSES OF THE PETITION

1. On 26 May 2009, the United States Army Corps of Engineers awarded Contract No. W912PL-09-C-0010, a design-build contract, to Jaynes Corporation for an unmanned aircraft system operations facility at Creech Air Force Base, Indian Springs, Nevada (pet. ex. 1).

2. By letter dated 16 May 2014, Jaynes Corporation submitted a claim seeking \$702,888.24. Jaynes Corporation's claim was divided into five parts, including remission of liquidated damages and alleged government changes to contract requirements. The claim was certified in accordance with the CDA, 41 U.S.C. § 7103(b). (Pet. ex. 1)

3. The CO received the claim on 30 May 2014 (pet. ex. 2).

4. Pursuant to Board Rule 1(a)(5), Jaynes Corporation petitioned the Board, by letter dated 31 July 2014, requesting an order directing the CO to issue a COFD on its claim no later than 29 August 2014.

5. By Board Order dated 4 August 2014, the Board directed the government to either show cause why such an order should not be issued or indicate when the contracting officer will issue a decision.

6. The government responded to the Board's Order stating, "the Contracting Officer will issue a Contracting Officer's Final Decision regarding the monetary claim for this project by 12 September 2014" (Bd. corr. ltr. dtd. 25 August 2014).

DECISION

Under the CDA, within 60 days of receipt of a certified claim over \$100,000 a CO must either issue a decision on the claim or notify the contractor of the time within which a decision will be issued. 41 U.S.C. § 7103(f)(2). In this instance, the CO had until 29 July 2014 to issue a decision or notify Jaynes Corporation of the time within which she would issue a decision. The CO failed to do so. No appeal from a deemed denial of its claim was filed by Jaynes Corporation.

The CDA provides that a contractor "may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer." 41 U.S.C. § 7103(f)(4). Board Rule 1(a)(5) implements this section providing that "[i]n lieu of filing a notice of appeal under paragraph (a)(1) or (a)(2) of this Rule, the contractor may petition the Board to direct the contracting officer to issue a decision in a specified period of time as determined by the Board."

Jaynes Corporation petitions the Board to direct the CO to issue a COFD on its 16 May 2014 claim no later than 29 August 2014 (SOF ¶¶ 2, 4). In response to a Board Order, the government has indicated that the CO will issue a COFD by no later than 12 September 2014 (SOF ¶ 6). The government's proffered date for issuance of a COFD on this multi-part claim is less than four months after the CO's receipt of the claim and only two weeks after the date requested by petitioner. We conclude that the

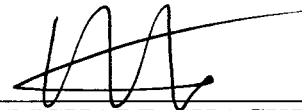
12 September 2014 date for issuance of a COFD is reasonable. Accordingly, Jaynes Corporation's petition is denied.

Dated: 3 September 2014



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

I concur



RICHARD SHACKLEFORD
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I concur



PETER D. TING
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 No. 59453-947, Petition of Jaynes Corporation, rendered in conformance with the Board's Charter.

Dated:

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