

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
ABS Development Corporation) ASBCA Nos. 61042, 61043, 61044
) 61045, 61046
)
Under Contract No. W912GB-10-C-0047)

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OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE
GOVERNMENT’S MOTION TO DISMISS

The government moves to dismiss these consolidated appeals for lack of jurisdiction because, the government says, the appeals are premature having been filed prior to a contracting officer’s final decision or the expiration of the time for the contracting officer to render a decision (gov’t mot. at 11). With respect to each of the five, 4 December 2016 certified claims (for sum-certain claims ranging from \$129,622 to \$1,654,387) that underlie the appeals, the contracting officer informed appellant on 3 February 2017 that she “intend[ed] to issue a final decision by 5 May 2017” (gov’t mot., tab 3D at 1). Appellant filed these appeals on the same day, 3 February 2017. The government filed its motion to dismiss, or, in the alternative, to stay proceedings, on 24 February 2017. On 20 April 2017, we stayed proceedings until 5 May 2017. The contracting officer has still not issued final decisions, and no follow-up communication from the contracting officer to appellant regarding when final decisions may be expected is presented in support of the motion.

We need not decide whether the appeals are premature. For certified claims in excess of \$100,000, the contracting officer must issue a decision within 60 days or else “notify the contractor of the time within which a decision will be issued.” *Metag Insaat Ticaret A.S.*, ASBCA No. 58616, 13 BCA ¶ 35,454 at 173,862 (citing Contract

Disputes Act, 41 U.S.C. § 7103(f)(2)(B)). However, the contracting officer's decision must be issued within a reasonable amount of time from receipt of the claim, "taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor." *Id.* (citing 41 U.S.C. § 7103(f)(3)). When, at the time we consider a motion to dismiss on the ground that an appeal is premature, an unreasonable period of time has elapsed without the issuance of a final contracting officer's decision, no useful purpose would be served by dismissing an appeal and requiring appellant to refile. *See id.*

It is long past 4 December 2016, and past 5 May 2017, without the contracting officer having issued final decisions on the claims underlying these appeals. Regardless of whether the appeals were filed prematurely, based upon the contracting officer's 3 February 2017 representation that she intended to issue final decisions by 5 May 2017, and in the absence of any follow-up communication from the contracting officer suggesting, for example, that the size and complexity of the claims, and the adequacy of information provided in support of the claims, require more time to issue final decisions, we find that an unreasonable period of time has elapsed, and that no useful purpose would be served by dismissing these appeals and requiring appellant to refile them.

The motion to dismiss is denied.

Dated: 14 June 2017


TIMOTHY P. MCILMAIL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



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

I concur



J. REID PROUTY
Administrative Judge
Acting Vice Chairman
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. 61042, 61043, 61044, 61045, 61046, Appeals of ABS Development Corporation, rendered in conformance with the Board's Charter.

Dated:

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