

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
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Gibraltar-Caddell, a Joint Venture) ASBCA No. 64379
)
Under Contract No. W9126G-19-D-0022)

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OPINION BY ADMINISTRATIVE JUDGE MELNICK ON THE GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

Gibraltar-Caddell Joint Venture (Gibraltar) has appealed a final decision by the Army Corps of Engineers (government) denying a termination for convenience damages claim. Gibraltar submitted the claim after concluding negotiations had reached an impasse. The government moves to dismiss the appeal for lack of jurisdiction, saying there is no impasse. Alternatively, the government maintains we lack jurisdiction because Gibraltar’s claim did not present a sum certain. In the event we retain jurisdiction, the government requests an indefinite stay to complete the termination settlement process. We deny the motion, concluding there is an impasse and that Gibraltar’s claim satisfies the requirements of our jurisdiction. We also deny the stay.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

The government’s motion assumes all the facts alleged by Gibraltar are true (gov’t mot. at 9). On February 1, 2022, the Army Corps of Engineers partially terminated this task order for design and construction by Gibraltar of border structures (compl. ¶¶ 1-2, 16; gov’t mot. ex. 3). After substantial completion of the unterminated work, Gibraltar submitted a termination settlement proposal (TSP or proposal) to the contracting officer (CO) on October 17, 2023, which it revised in response to

government claims of inadequacy in January 2024 (compl. ¶¶ 37, 44). On February 21, 2024, the government submitted the TSP to its auditors (compl. ¶ 46).

Generally predating the submission of Gibraltar's TSP, it submitted TSPs for four of its subcontractors. In March 2023, Gibraltar submitted a TSP for International Towers LLC (ITL). On June 6, 2024, Gibraltar submitted a ratification package. (Compl. ¶ 56) Since then, Gibraltar and ITL have attempted to advance the settlement process with the government, but the Terminating Contracting Officer (TCO) continues to review the TSP (compl. ¶ 57). In December 2025, ITL indicated it would be adjusting for additional incurred costs (gov't mot. ex. 13 at 2).

In January 2023, Gibraltar submitted the TSP for another subcontractor, Relyant Global, LLC (Relyant). The government completed its audit in November 2023, and a ratification package was submitted in January 2025. (Compl. ¶¶ 58-60) The government, Gibraltar, and Relyant then agreed in January that the government would assist in settling with Relyant and it would be paid through Gibraltar as part of the overall settlement with it (compl. ¶ 61; gov't mot. ex. 9). Since then, the government has been reviewing the proposal (compl. ¶¶ 62-65).

In April 2023, Gibraltar submitted the TSP for a third subcontractor, Gibraltar Fabrications, LLC (GFAB), which it revised in June and then again in January 2024 (compl. ¶ 66). Seven months later, on August 30, 2024, the CO announced that GFAB's proposal could not be audited through normal processes and that it would perform an alternative "desk audit" (compl. ¶¶ 66-67). In January 2025, Gibraltar submitted GFAB's ratification package to the government (compl. ¶ 69). The government has communicated nothing more.

It is not clear when a fourth subcontractor, JCF Bridge, submitted its TSP, but it had done so by March 2024. At that time, the government expressed dissatisfaction with it. (Gov't mot. ex. 15) The record does not show further progress by the parties. Gibraltar says it later incorporated the small amount sought by JCF Bridge into its own TSP, which the government does not deny (app. br. ¶ 30).

Returning to Gibraltar's own TSP submission, in September 2024, the government told Gibraltar the audit it had requested in February would be completed in April 2025 (compl. ¶ 87). In March 2025, the government told it the audit had been extended to July (compl. ¶ 88).

On June 16, 2025, Gibraltar submitted a certified claim for the costs incurred by Gibraltar and its subcontractors. The revised amount sought was \$17,608,875. (Compl. ¶ 4; gov't mot. ex. 10). After reciting a description of the events, the claim observed that over three years had passed since the partial termination and Gibraltar had received no payment, suggesting the process had been unreasonably delayed to the

point of an impasse. On August 11, Gibraltar requested a negotiation or mediation. The government declined. (App. mot. ex. 23 at 4-5) On August 25, the CO denied the claim (compl. ¶ 5).

On August 27, 2025, the government issued its audit of Gibraltar. It did not provide it to Gibraltar until October 2 (compl. ¶ 48).

On October 20, 2025, Gibraltar requested another negotiation, which the government declined on the grounds that Gibraltar had not appealed its claim denial (app. ex. 24 at 5-6). On October 28, Gibraltar appealed to this Board.

DECISION

The government contends the appeal should be dismissed because Gibraltar's TSP was not a claim and its June 16, 2025, submission was also not a claim because the parties' TSP negotiation had not reached an impasse. It is true that upon submission, a TSP is not a claim. Only upon the negotiations reaching an impasse can the proposal ripen into a claim. *James M. Ellett Constr. Co. v. United States*, 93 F.3d 1537, 1543-44 (Fed. Cir. 1996); *Dev. & Evolution Constr. Co.*, ASBCA No. 58342, 13 BCA ¶ 35,453 at 173,859. Likewise, a request for a final decision after submission of a TSP can only be so construed if the negotiations are at an impasse. *Rex Sys., Inc. v. Cohen*, 224 F.3d 1367, 1373 (Fed. Cir. 2000).

"An impasse requires a stalemate or a break-down in negotiations." *Id.* The Board has held that it is a deadlock, meaning "the point where an objective, reasonable, third-party observer would conclude that resolution through continued negotiations is unlikely and continued negotiation is unwarranted." *Cent. Env't, Inc.*, ASBCA No. 51086, 98-2 BCA ¶ 29,912 at 148,080. However, an impasse does not mean a dispute. "Thus, an impasse can exist without either party taking a firm position in opposition to the other." *Id.*; see also *Aerokool Aviation Corp.*, ASBCA No. 63637, 23-1 BCA ¶ 38,448 at 186,863. Crucially, "[p]assage of time without resolution can constitute an impasse when one party evidences a desire to begin the disputes process." Also significant is the CO's refusal to negotiate. *Cent. Env't*, 98-2 BCA ¶ 29,912 at 148,080, *cited with approval in Rex Sys.*, 224 F.3d at 1372 (characterizing *Central Environmental* to hold that a "contractor's explicit request for a final decision, in conjunction with the Contracting Officer's refusal to meet to negotiate, established an impasse."); see also *Aerokool*, 23-1 BCA ¶ 38,448 at 186,863. These factors can evidence that a party has reasonably lost confidence that the process is leading to a resolution.

Here, Gibraltar first submitted its TSP in October 2023. Gibraltar revised it in cooperation with the government to address claims of inadequacy so that it could be submitted to government auditors in February 2024. Sixteen months had passed with

no audit report about Gibraltar's proposal and no further outreach from the government to negotiate when Gibraltar submitted its certified claim. It submitted its TSPs for at least three of its subcontractors even before its own TSP. Since Gibraltar submitted a ratification package for ITL in June 2024, there have been no further discussions about it. Contrary to the government's suggestion, the fact that ITL may have incurred additional costs with the passage of time does not refute that the parties have failed to make progress on the proposal. After the government agreed to assist with negotiating with Relyant in January 2025, nothing more happened. GFAB's TSP was submitted in April 2023 and then revised through January 2024. Seven months later, the government decided it could not audit it normally and would perform a desk audit. Though Gibraltar submitted a ratification package in January 2025, there have been no further communications. To the extent there remained outstanding concerns or issues with the government, the parties made no progress addressing them.

Given these events and the passage of so much time, it was not unreasonable for Gibraltar to conclude in June 2025 that the process had stagnated. There had been no negotiations about Gibraltar's proposal, and whatever discussions transpired regarding its subcontractors had led to nothing. Also, no progress had been made in resolving outstanding impediments perceived by the government. Furthermore, the government expressly refused to negotiate with Gibraltar in August and October 2025. The government argues that its refusal to negotiate is irrelevant because Gibraltar made those requests after declaring an impasse and submitting its claim. We disagree. It is the government's position that Gibraltar's certified claim was invalid because there was supposedly no impasse. Yet, it would not negotiate. Had it done so, that might tend to show it was correct. That it refused is probative of its contention being false and of an impasse. *See Cent. Env't*, 98-2 BCA ¶ 29,912 at 148,079-080 (finding government refusal to negotiate after contractor's claim submission relevant to the existence of an impasse). The passage of so much time with so little progress, the demand for a final decision, and the government's refusal to negotiate are enough for a reasonable third party to conclude that the parties are not progressing toward resolution.* We stress that this conclusion is not an indictment of the government.

* The government cites language in *Rex Systems* saying that lengthy negotiations or passage of time do not alone establish an impasse. There, a contractor who had executed a settlement agreement with the government sought to recover interest, claiming that an impasse had occurred before the parties reached agreement. The court of appeals held there was no impasse given the agreement. 224 F.3d at 1368, 1373. The court proceeded in dicta to address appellant's argument that the negotiation period had been long, with gaps between discussions. The court observed that the parties had numerous meetings to negotiate. Long gaps in between did not establish an impasse. *Id.* at 1373. It seems correct that active negotiations are not necessarily at an

It may very well have had valid reasons for what it did or did not do. Gibraltar or its subcontractors may also bear responsibility for the lack of progress. But our task is not to assign fault for the impasse; we must only determine whether it exists. We find it does.

Alternatively, the government contends we lack jurisdiction over this appeal because Gibraltar's claim supposedly fails to comply with the Contract Disputes Act's (CDA) "fundamental definition of a 'claim'" which the government says must "request a 'sum certain.'" The government contends Gibraltar cannot be "certain" of its subcontractor costs until the government has finished auditing them, suggesting that if the government decides they are unreasonable or unallocable, then Gibraltar cannot seek them or deem them part of a sum certain. It says Gibraltar has no right to payment for subcontractor costs that have not been settled and ratified.

Our CDA jurisdiction is dependent upon a final decision on a valid claim. *Northrop Grumman Computing Sys., Inc. v. United States*, 709 F.3d 1107, 1111-12 (Fed. Cir. 2013); *see* 41 U.S.C. § 7103. The government's reference to the need for a sum certain arises from FAR 52.233-1(c), which, among other things, defines a claim to be a written demand for "the payment of money in a sum certain." Contrary to the government's suggestion, compliance with this regulatory sum certain requirement is no longer a prerequisite to our jurisdiction. *ECC Int'l Constructors, LLC v. Sec. of the Army*, 79 F.4th 1364, 1371-75 (Fed. Cir. 2023). Instead, an alleged failure to state a sum certain relates to Gibraltar's legal right to recover, not our jurisdiction to entertain its claim.

All the CDA requires of relevance here for us to exercise jurisdiction is that a claim for money give notice of its general amount. *Envistacom, LLC*, ASBCA No. 63796, 25-1 BCA ¶ 38,775 at 188,486. Gibraltar's revised claim says it seeks \$17,608,875. Also, a claim such as this exceeding \$100,000 must be certified in accordance with 41 U.S.C. § 7103(b). Gibraltar has submitted that certification. We are not required to examine the claim, as the government implies, and to judge whether Gibraltar possessed sufficient information to pursue it or its legal entitlement to recover before we assume jurisdiction over the appeal.

Finally, in the event we deny the motion to dismiss, the government requests that we indefinitely stay the appeal until the termination settlement procedure is complete. Gibraltar opposes. Having reached an impasse, that process transformed into a claim and appeal. We are not inclined to stay the appeal for settlement negotiations without the consent of both parties, and we would not do so indefinitely.

impasse simply because the rhythm of the interactions is slow and both parties are taking their time. That did not happen here.

The request is denied.

CONCLUSION

The motions to dismiss and stay are denied

Dated: July 13, 2026



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

I concur



J REID PROUTY
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

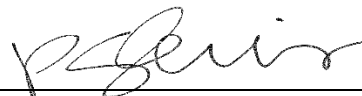
I concur



DAVID D'ALESSANDRIS
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 No. 64379, Appeal of Gibraltar-Caddell, a Joint Venture, rendered in conformance with the Board's Charter.

Dated: July 13, 2026



PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals