



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED; ALTERNATE MOTION TO
SUSPEND APPEAL GRANTED: September 24, 2010

CBCA 2119

TKC AEROSPACE,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Douglas C. Proxmire of Patton Boggs LLP, Washington, DC, counsel for Appellant.

J. Stephen Brophy, Office of Procurement Law, United States Coast Guard, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **GOODMAN**, **McCANN**, and **DRUMMOND**.

McCANN, Board Judge.

On August 30, 2010, respondent filed "Respondent's Motion to Dismiss the Appeal and Alternate Motion to Suspend the Appeal." On September 9, 2010, appellant filed its opposition.

In response to the submission of a properly certified claim by appellant on June 23, 2010, the contracting officer indicated that he will issue his final decision no later than November 19, 2010. This is slightly over ninety days more than the typical sixty-day period allotted for issuing a final decision under the Contract Disputes Act, 41 USC § 605(c)(2) (2006). In its motion, respondent asks the Board to dismiss the appeal or suspend it on the grounds that the contracting officer needs more time "to investigate the claim facts, attempt some discussion and factual resolution or prepare a detailed final

decision.” Respondent states that the corrosion issues on the aircraft are technical in nature and discussion with experts is required. Respondent also informs the Board that the contracting officer is very busy, that September is a busy month for the contracting officer, and that the contracting officer is trying to establish a new contract lease of an aircraft.

In response, appellant avers that it has provided the contracting officer with extensive information regarding the claim and has responded in detail and in writing to many questions submitted to it by the contracting officer. It also contends that the issues are not that difficult and that it is suffering substantial hardship because it is a small business and has not been paid the \$629,536.18 to which it claims it is entitled.

Under 41 § 605(c)(5), the Board has the option of granting a stay of the proceedings when an appeal has been filed prior to a final decision being rendered on a properly submitted claim. The Board has considered the arguments and allegations presented by the parties in this case. While the Board is not entirely convinced under the circumstances that the contracting officer needs until November 19, 2010, to issue his decision, in other words that the time set for him to issue the decision is totally reasonable, the Board will nevertheless grant the stay requested by respondent. At this point, November 19, 2010, is less than 60 days away. The record on the issue of the reasonableness of the time period is minimal, and the Board is not inclined to listen to further argument to decide upon a lesser time period when that time period will be expiring on its own shortly. Such further litigation on this issue is not in the interests of either party.

The Board will issue an amendment to its pre-trial order taking into account the granting of the requested suspension of the proceedings.

Respondent’s motion to dismiss the appeal is **DENIED**. Respondent’s alternate Motion to Suspend the Appeal is **GRANTED**.

R. ANTHONY McCANN
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

JEROME M. DRUMMOND
Board Judge