



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: December 13, 2016

CBCA 5534

AGBAYANI CONSTRUCTION CORPORATION,

Appellant,

v.

DEPARTMENT OF COMMERCE,

Respondent.

Michael J. Gardner of Troutman Sanders, LLP, Virginia Beach, VA, counsel for Appellant.

James Rhodes and Lauren Didiuk, Office of the General Counsel, Department of Commerce, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **KULLBERG**, and **RUSSELL**.

**SHERIDAN**, Board Judge.

The appellant, Agbayani Construction Corporation (ACC) and the respondent, Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) jointly move to dismiss the above-captioned appeal for lack of jurisdiction.

Background

On August 31, 2016, ACC submitted a certified claim in the amount of \$208,502, to a NOAA contracting officer concerning contract AB1330-12-CN-0117. Pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), the contracting officer has sixty days from receipt of a certified claim over \$100,000 to either “issue a decision” or “notify the contractor of the time within which a decision will be issued.” 41 U.S.C. § 7103(f)(2). The implementing regulations in the Federal Acquisition Regulation (FAR) include the same time frame. 48 CFR 33.211(c)(2) (2015). The FAR also adds that in the

event the contracting officer notifies the contractor within sixty days of a later date for issuing the decision, “[t]he contracting officer shall issue a decision within a reasonable time, taking into account — (1) The size and complexity of the claim; (2) The adequacy of the contractor’s supporting data; and (3) Any other relevant factors.” Accordingly, the statutory and regulatory framework is clear that the contracting officer had until October 31, 2016, to either issue a decision or notify ACC of a later date by which the decision would be issued.

On Friday, October 28, 2016, the contracting officer sent an email message to ACC’s counsel indicating that a final decision would be issued “on or before February 28, 2016 [sic].” This notification was received within the sixty-day limitation set forth in the CDA. Accordingly, the Government’s actions do not constitute a “deemed denial” in accordance with the CDA. *See* 41 U.S.C. § 7103(f)(5) (stating that “[F]ailure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal” to the Board). Since the time period for issuing a final decision has not elapsed, this appeal is premature and, as a result, the Board lacks jurisdiction. *See Fire Security Systems, Inc. v. General Services Administration*, GSBCA 12350, 93-3 BCA ¶ 26,047 (dismissing appeal as premature when sixty days had not passed since appellant’s request for a contracting officer’s final decision).

### Decision

Accordingly, this appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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PATRICIA J. SHERIDAN  
Board Judge

We concur:

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H. CHUCK KULLBERG  
Board Judge

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BEVERLY M. RUSSELL  
Board Judge