



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

PETITION DENIED: March 2, 2017

CBCA 5616

STOBIL ENTERPRISE,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Billie O. Stone, Chief Executive Officer of Stobil Enterprise, San Antonio, TX, appearing for Appellant.

Mary A. Mitchell, District Contracting National Practice Group, Department of Veterans Affairs, Houston, TX, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **ZISCHKAU**, and **RUSSELL**.

RUSSELL, Board Judge.

Petitioner Stobil Enterprise (Stobil) requests that the Board direct the Department of Veterans Affairs (VA) to issue a decision on Stobil's contract claim on a date earlier than that identified by the VA. For the reasons set forth below, we deny the request.

Background

In March 2016, Stobil filed an appeal (CBCA 5246) with the Board based on its contracts with the VA to provide housekeeping and dietary services for an inpatient living program at a VA facility. In that appeal, Stobil requested approximately \$166,000 in relief based on wage determination requirements under the Service Contract Act, 41 U.S.C. §§

6701-6707 (2012), losses for damaged goods and equipment, loss of contractor opportunities, incurred administrative costs, interest, and the VA's past performance evaluation of Stobil. On August 19, 2016, the Board dismissed the appeal for lack of jurisdiction because of Stobil's failure to submit a certified claim to the VA consistent with section 7103(b) of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), upon which the contracting officer could issue a valid decision. *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5246, 16-1 BCA ¶ 36,478, at 177,741, *motion for reconsideration denied*, 17-1 BCA ¶ 36,610 (2016).¹

Subsequently, by letter dated November 28, 2016, Stobil submitted a claim which it deemed certified to the VA's contracting office. The claim was based on the same contracts and similar issues as those presented in CBCA 5246. In the November 2016 claim, Stobil sought \$321,288.20, plus approximately \$2.3 million in interest. By letter dated January 27, 2017, the VA's contracting officer notified Stobil that, pursuant to section 33.211(c)(2) of the Federal Acquisition Regulation (48 CFR 33.211(c)(2) (2015)), the contracting officer would issue his decision on Stobil's claim by March 31, 2017. Stobil argues that this date is unreasonable because the VA is already in possession of the relevant facts and evidence of Stobil's claim, and there are no additional matters affecting the complexity of the claim. The VA's position is that the identified date for issuance of the decision, March 31, 2017, is not unreasonable in light of the significant increase in damages sought by Stobil absent submission of any documentation to support the increase.

Discussion

Under the CDA, for claims over \$100,000, a contracting officer must, within sixty days of receipt of a certified claim, issue a decision on that claim or notify the contractor of the time within which the decision will be issued. 41 U.S.C. § 7103(f)(3). The CDA requires that a contracting officer issue a decision on a claim within a reasonable time, "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." 41 U.S.C. § 7103(f)(3); *see also* 48 CFR 33.211(c)(2). "[I]n the event of undue delay on the part of the contracting officer," a contractor may request that the concerned tribunal, either the Board or the Court

¹ Notwithstanding the lack of a certified claim, the contracting officer did issue decisions on Stobil's claim prior to Stobil's appeal to the Board. However, as noted in the Board's decision dismissing CBCA 5246, a contracting officer's decision on an uncertified claim cannot confer jurisdiction or cure the jurisdictional defect of an uncertified claim. *Stobil Enterprise*, 16-1 BCA ¶ 36,478, at 177,740.

of Federal Claims, “direct [the] contracting officer to issue a decision in a specified period of time, as determined by the tribunal.” 41 U.S.C. § 7103(f)(4).

Here, Stobil submitted its claim to the VA by letter dated November 28, 2016. Consistent with 41 U.S.C. § 7103(f)(3), within sixty days of that date, the VA’s contracting officer, by letter dated January 27, 2017, notified Stobil that the VA would release a decision on Stobil’s claim by March 31, 2017. Stobil requests that the Board direct the VA to issue its decision on an earlier date. The question for the Board is whether the contracting officer’s identified date for release of the decision on Stobil’s claim suggests “undue delay” on the contracting officer’s part such that the Board should grant Stobil’s request.

“Typically, in evaluating undue delay and reasonableness [of the date proposed by the contracting officer for issuance of a decision on a claim], a tribunal considers a number of factors, including the underlying claim’s complexity, the adequacy of contractor-provided supporting information, the need for external technical analysis by experts, the desirability of an audit, and the size of and detail contained in the claim.” *Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,119. In Stobil’s favor is the fact that the VA has previously issued decisions on a claim from Stobil based on matters which overlap Stobil’s pending claim. *See Stobil Enterprise*, 16-1 BCA at 177,740. Nevertheless, the Board is disinclined to grant Stobil’s request to compel an earlier decision date on this pending claim.

With apparently no explanation as to why, Stobil nearly doubled the amount of its claim from its former appeal (CBCA 5246) to the one submitted in November 2016 - from approximately \$166,000 to \$321,288.20, and is also now seeking around \$2.3 million in interest. This is by no means a slight up-tick in money sought, such that the contracting officer should be able to rely primarily on whatever documentation Stobil previously submitted in support of its claim presented in CBCA 5246. The VA additionally argues that the items presented in Stobil’s pending claim are not entirely duplicative of those at issue in CBCA 5246.

With such a significantly increased monetary demand and possibly new items requiring review by the contracting officer, the VA argues that Stobil has essentially submitted a substantively different claim from the one at issue in CBCA 5246. The Board agrees, and thus finds that the contracting officer’s determination to issue a decision four months from submission of Stobil’s claim does not constitute “undue delay.” Given Stobil’s greatly enhanced claim, the contracting officer will likely need to consider factors not discussed in the VA’s previous decisions on Stobil’s claim. The contracting officer might want to provide Stobil with an opportunity to support its pending claim and, based on the response and any other investigative steps determined necessary, make an informed decision

on the claim. Such effort on the part of the contracting officer advances the VA's obligations under the CDA to undertake the initial review of the merits of a contractor's claim. As the Board noted in *Ahtna Environmental, Inc. v. Department of Transportation*:

Congress made clear in the CDA that the contracting officer's consideration and analysis of the claim in the first instance, before judicial review of the claims' merits commences, is an essential element of the claim resolution process that can be helpful to the reviewing tribunal.

CBCA 5456, slip op. at 5 (Jan. 12, 2017).

Because Stobil has presented what is fairly characterized as a substantially different claim from that in CBCA 5246, particularly in terms of damages sought, the VA's time frame for considering and deadline for issuing a decision on the claim (March 31, 2017) is reasonable, constituting only a modest delay. If, however, the VA does not timely issue a decision consistent with the provisions of the CDA, Stobil may consider its claim deemed denied and file an appeal. *See Hawk Contracting Group*, 16-1 BCA at 178,119. The Board cautions that the timeliness of the contracting officer's decision might well depend on Stobil's own timeliness in providing any comprehensive, responsive information requested by the contracting officer.

Decision

For the foregoing reasons, we **DENY** Stobil's request for the Board to direct the contracting officer to issue a decision earlier than March 31, 2017.

BEVERLY M. RUSSELL
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JONATHAN D. ZISCHKAU
Board Judge