



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: December 10, 2018

CBCA 6289

G.E.M. CONSTRUCTORS, INC.,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Sabrina P. Rockoff and Alston F. Ludwig of McGuire, Wood & Bissette, P.A., Asheville, NC, counsel for Petitioner.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Houston, TX, counsel for Respondent.

SOMERS, Board Judge (Chair).

Pursuant to section 7103(f)(4) of the Contract Disputes Act (CDA), 41 U.S.C. §§7101-7109 (2012), and Board Rule 2(b) (48 CFR 6101.2(b)(2018)), petitioner, G.E.M. Constructors, Inc. (G.E.M.), requests that the Board direct the Department of Veterans Affairs (VA) contracting officer to issue a decision earlier than the date the contracting officer has identified for its expected issuance. For the reasons set forth below, we grant G.E.M.'s request.

Background

On September 12, 2014, the VA awarded contract VA246-14-C-215 to G.E.M. to provide construction services associated with the project for the total cost of \$8,268,340.00. On July 26, 2018, G.E.M. submitted a certified claim to the contracting officer seeking \$4,084,792.11.

After receiving the claim, the VA explained that it needed to hire a claims consultant to assist the contracting officer in evaluating the claim. The contracting officer informed G.E.M. that a final decision would not be issued until March 9, 2019. The VA awarded a contract for consulting services on October 15, 2018. The report is due to the VA on December 14, 2018.

During a status conference with the Board on November 15, 2018, the VA clarified that it could complete the review and issue a final decision earlier than previously indicated. The VA stated that the contracting officer could issue the decision by January 18, 2019.

Discussion

Under the CDA, within sixty days of receiving a contractor's written certified claim of more than \$100,000, the contracting officer must either issue a decision on the claim or "notify the contractor of the time within which a decision will be issued." 41 U.S.C. §7103(f)(2). While the CDA does allow the contracting officer to extend the deadline of making a decision on the claim, it requires the written decision "be issued 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 Rudolph & Sletten, Inc. v. United States*, 120 Fed. Cl. 137, 141 n.2 (2015) ("Section 7103(f)(3) places a reasonableness limitation on section 7103(f)(2)(B) and prevents the contracting officer from setting a final decision date far in the future."). The statute provides that "[a] contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer." 41 U.S.C. §7103(f)(4).

Originally, the VA contracting officer requested 170 additional days to provide G.E.M. with a final decision. However, the VA later stated that it only needed 120 days to issue a final decision. In light of that, we order the VA to issue a final decision no later than January 18, 2019.

Decision

For the foregoing reasons, the petition is **GRANTED**. The VA contracting officer shall issue a decision no later than January 18, 2019.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge