



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

CONSOLIDATION AND ORDER ON FURTHER PROCEEDINGS: April 13, 2015

CBCA 4665, 4666, 4667, 4668

FLOWSENSE, LLC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Paul Smallwood, President of FlowSense, LLC, appearing for Appellant.

Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

WALTERS, Board Judge.

ORDER

The four above-captioned appeals were docketed by the Board on April 13, 2015, and were assigned to Judge Richard C. Walters. Because the appeals all arise under the same contract, they are consolidated for purposes of adjudication. The following directives shall be followed in conjunction with the consolidated appeals.

Complaint. Appellant's complaint should be received by the Board and the respondent no later than **close of business (4:30 p.m. Eastern Time), Wednesday, May 13, 2015.**

Answer. Respondent's answer should be received by the Board not later than **close of business, Friday, June 12, 2015.**

Appeal File. By not later than **close of business, Wednesday, May 13, 2015**, in accordance with Board Rule 4, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the appeal, including:

- any contract documents;
- all notes, correspondence, and e-mails between the parties that are relevant to the appeal;
- affidavits or statements or any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal; and
- any additional existing evidence or information deemed necessary to determine the merits of the appeal.

As agency policy may dictate, prior to submitting the appeal file to the Board, agency officials may wish to consult with agency counsel regarding the appeal file. Such consultation should occur sufficiently in advance of the due date so that the appeal file is able to be received by the Board by no later than the date set forth above.

Appeal file exhibits must be originals or true copies. Ensure that each and every document is complete and legible. Documents should be ordered chronologically, earliest documents first, and must be tabbed to allow ready reference. Documents should be placed in three-ring binders not larger than three inches. Label both the front and the spine of each binder with the name of the appellant, CBCA docket number, and the numbers of the exhibits contained in that binder, *e.g.*, Exhibits 1-10. Outsize drawings may be submitted separately. Prepare an index for the appeal file being submitted and place a copy in each volume. The index should state whether it was prepared by the respondent or appellant, and should contain columns indicating the exhibit number, a brief description of the document, and the date of that document. The numbering shall be consecutive (Exhibit 1, Exhibit 2, etc.), in whole Arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered and tabbed exhibits. In addition, the pages within each exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index shall indicate which exhibits, if any, have been filed with the Board *in camera* or under protective order or otherwise have not been served on every other party. The contracting officer shall serve a copy of the appeal file upon the appellant's representative at the same time and a like manner as it is submitted to the Board.

Within thirty days of the filing of the respondent's appeal file exhibits, appellant shall file with the Board for inclusion in the appeal file, supplemental documents or other tangible things relevant to the appeal that have not been submitted by the contracting officer.

Appellant should begin numbering of exhibits with the number that follows respondent's last appeal file exhibit, and must follow the rules set forth above for ordering, indexing, and tabbing the exhibits. Appellant's representative shall serve a copy of its appeal file supplement containing the additional exhibits upon the respondent's representative at the same time and a like manner as it is submitted to the Board.

In making appeal file submissions, the parties should take particular care not to duplicate exhibits already contained in the appeal file. All exhibits in the appeal file, except of those as to which an objection has been sustained, will be made part of the record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record, any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

Initial Conference Call. The initial telephone conference call in this appeal shall be conducted at **11:00 a.m. (Eastern Time), Tuesday, June 16, 2015**. The conference call is estimated to take approximately one hour. The parties are instructed to confer with each other prior to the conference call, and to the extent possible, reach agreements on various subjects, as set forth below.

It is anticipated that, during the conference call, each party will be expected to be able to discuss the nature of the case, remedies sought, and defenses; questions regarding Board jurisdiction; and, the burden of going forward with the evidence. The parties should have agreed to a proposed schedule for the processing of the appeal that addresses:

- the anticipated scope of discovery;
- a mutually agreeable schedule for discovery;
- the exchange of witness lists;
- the use of expert witnesses;
- the exchange of exhibits;
- whether a hearing will be needed; and
- other pertinent matters.

During the initial conference call, the parties will be expected to review their proposed schedule with the undersigned who, prior to establishing a schedule for this appeal, will consider the parties proposed activities in relationship to the proposed schedule.

Alternative Dispute Resolution (ADR). The parties are strongly encouraged to consider the appropriateness of using ADR in accordance with the provisions of Board Rule 54 as early in the appeal process as is feasible. With the agreement of the undersigned, the proceedings and due dates set forth below may be modified and/or stayed to allow for ADR proceedings. Prior to the conference call, the parties' representatives should confer on the appropriateness of using ADR procedures to help resolve the appeal, and be prepared to discuss whether and why ADR is or is not appropriate for this matter.

Correspondence With and Filings at the Board. For future correspondence and filings, reference should be made to the assigned docket number. When a party sends a document to the Board it must at the same time send a copy to the other party by an equal or more expeditious means of transmittal.

Unless unusual circumstances exist, such as with construction drawings, all documents filed with the Board should be on letter-size paper.

Due to delays in delivery of U.S. Postal Service mail, please transmit correspondence and filings via hand or overnight delivery or by facsimile. The Board's facsimile telephone number is (202) 606-0019. Hand or overnight delivery should be made to:

Attn: Judge Richard C. Walters
Civilian Board of Contract Appeals
1800 M Street, N.W.
6th Floor
Washington, DC 20036

Electronic (E-mail) Filing.

The CBCA now accepts filings submitted by electronic mail (e-mail) (**excluding Appeal Files submitted pursuant to Rule 4 of the Board's Rules of Procedure**). A filing may be made by e-mailing it to: cbca.efile@cbca.gov. [**NOTE:** E-mails sent directly to Judge Walters will not be accepted.]

Any documents attached to an e-mail message must be in PDF format and ***may not exceed 18 MB total***. **Attached documents that are not in PDF format will not be accepted; they will be deleted upon receipt.**

The Board's normal business hours are 8 a.m. to 4:30 p.m., Eastern Time, on every day except Saturdays, Sundays and Federal holidays. All e-mail filings received by 4:30 p.m., Eastern Time, on a day the Board is open for business will be considered to be filed on that

day. E-mail filings received after that time will be considered to be filed on the next business day.

Note: PDF documents containing viruses will be blocked by the Board's e-mail system. All PDF documents should be scanned for viruses before they are sent to the Board to ensure that the e-mail filing is not discarded and the filing timely made.

Any questions about e-mail filings should be addressed to the Clerk by telephone at (202) 606-8800.

Communication with the Board. The parties should not attempt to communicate directly with the undersigned in an *ex parte* manner. All communications with the Board should be made in writing, with copy to the opposing party representative. E-mail communications with the Board are not permitted, except in conjunction with ADR proceedings. The Board recognizes that, from time to time, due dates may not be able to be met. In instances where an extension is needed and there is insufficient time to coordinate the request in writing, parties' representatives may contact Ms. Valerie P. Bland, Judge Walters' legal staff assistant, and request her coordination and assistance. Ms. Bland's telephone number is (202) 606-8814. In the event a particular date cannot be met, prior to contacting Ms. Bland, the party who is unable to meet the date should contact the opposing party's representative to secure an agreement to change the due date. Once both parties have agreed to a prospective new date(s), the requesting party may contact Ms. Valerie P. Bland via telephone with the proposed date(s), and she will check with the undersigned regarding the appropriateness of the extension and availability. Requests should be made well in advance of scheduled dates. In requesting a change, the requestor should state the reasons for the request and that opposing party's representative has been contacted and concurs with the proposed date. The request should also contain the proposed extended date(s) as agreed to by the parties. A party should not contact Ms. Bland until they have first attempted to contact the opposing party regarding the change request.

Discovery. The CBCA encourages the parties to conduct discovery voluntarily. Parties should cooperate by exchanging or making available all relevant data. Attempts to gain advantage through surprise by concealing information may result in the Board's refusing to receive evidence or imposing other appropriate sanctions. **Within thirty days after the initial conference call**, the parties shall forward to the Board their anticipated discovery schedule. The schedule shall include target dates for each discovery procedure.

If any claim of privilege or other objection to discovery arises which the parties cannot resolve, the party seeking discovery should request and provide justification for a formal discovery order.

Copies of responses to discovery requests (such as answers to interrogatories, production of documents and admissions) shall **NOT** be sent to the Board. Letters of transmittal of responses may be sent to the Board so that progress may be monitored.

Conferences. The Board urges the parties to meet or converse to clarify the issues, exchange information, develop stipulations, agree on scheduling, and to discuss settlement. Either party may request a conference of both parties with the undersigned to be held at a mutually agreeable date and time, in person or by telephone, if the parties consider it would be helpful. The Board may also schedule conferences on its own motion when it determines they may be beneficial.

Status Reports. In addition to, and as part of submissions required above, until further notice, the parties shall confer with each other and forward to the undersigned the third Monday of each month, a joint status report indicating the actions accomplished during the previous month, the parties' consideration and/or plans for utilization of ADR proceedings, and what actions are anticipated during the next month. The first joint status report is due to the Board by **close of business, Monday, June 15, 2015.**

The parties' cooperation in the dispute resolution process is appreciated.

RICHARD C. WALTERS
Board Judge