



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: May 14, 2020

CBCA 6783

CTA I, LLC dba CTA BUILDERS,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John M. Manfredonia of Manfredonia Law Offices, LLC, Cresskill, NJ ; and William E. Dorris of Kilpatrick Townsend & Stockton LLP, Atlanta, GA, counsel for Petitioner.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Decatur, GA, counsel for Respondent.

Before Board Judges **GOODMAN**, **KULLBERG**, and **CHADWICK**.

CHADWICK, Board Judge.

CTA I, LLC dba CTA Builders (CTA) submitted a certified claim for \$4.4 million to a Department of Veterans Affairs (VA) contracting officer in January 2020. In March 2020, the contracting officer timely advised CTA under 41 U.S.C. § 7103(f)(4) (2012) that he would decide the claim, not within sixty days of submission, but by November 9, 2020, 284 days after submission. In early April 2020, CTA petitioned the Board under 41 U.S.C. § 7103(f)(4) and Board Rule 2(a)(2) (48 CFR 6101.2(a)(2) (2019)) for an order setting the deadline for a decision or a deemed denial of the claim “no later than May 30, 2020,” which CTA has extended in a brief to June 15, 2020. We grant the petition as modified.

Background

The parties partially settled an earlier appeal involving the same construction contract two years ago. The Board stayed that case (CBCA 5826) in June 2018, noting our “expectation that it w[ould] be unstayed and consolidated with a future appeal filed after contract completion, to resolve remaining claims” not settled in CBCA 5826 “for *Eichleay* damages, attorney fees, and consultant fees. The parties should promptly advise the Board, should it appear that no second appeal will be filed.” Previously, VA had unsuccessfully moved to stay CBCA 5826 “until the project [wa]s complete,” noting that CTA had “made clear that a second Claim is forthcoming.” *CTA I, LLC v. Department of Veterans Affairs*, CBCA 5826, 18-1 BCA ¶ 36,995 (single-judge order).

VA terminated the contract for convenience in January 2019, although the current contracting officer states in a declaration that he is not entirely sure how much work was completed versus uncompleted. At that point, the matter fell through the cracks at VA. A new contracting officer was assigned in November 2019. In late January 2020, CTA filed the second certified claim that the parties had foreseen in 2018, but VA was not ready for it. A month after receiving the claim, the contracting officer began seeking funding to retain a claim consultant. In March 2020, the contracting officer and the project engineering office exchanged emails about the duration and expected cost of a claim review. It was at this time that the contracting officer promised CTA a decision by November 9, 2020. The contracting officer advised us at the end of April 2020 that a “funding request for claim consultant services” was “with the VISN 6 Network Director for signature. The funding ha[d] not yet been obtained and [wa]s not available to issue a solicitation”

Discussion

We may shorten a deadline to decide a claim that a contracting officer has set within sixty days of receiving the claim “in the event of undue delay on the part of the contracting officer.” 41 U.S.C. § 7103(f)(4); see *Monster Government Solutions, LLC v. Department of Justice*, CBCA 2834, 12-2 BCA ¶ 35,153; *Volmar Construction, Inc.*, ASBCA 60710-910, 16-1 BCA ¶ 36,519.

VA notes that CTA “had the benefit of 362 days from the time of Contract termination to the time it submitted its Claim” and argues that the agency “did not unduly delay the matter” or “set an unreasonable deadline for a final decision,” having “taken [steps] to secure a claims consultant well within the original 60-day review period.” VA’s projected timeline to a decision includes ninety days of claim review, thirty days of “negotiation” with CTA, and thirty days of decision “routing/review,” among other activities.

CTA does not wish to wait any longer to appeal. It argues that “VA knew well over a year ago that CTA would be submitting a second claim” but VA “did nothing This pre-claim knowledge and . . . lack of advance planning [militates] against granting the VA more time” CTA adds that if we were to require a decision by Saturday, June 13, 2020, this would be 141 days after claim submission and would encompass ninety days for claim review, thirty days to finalize VA’s position, and 21 days to draft the decision and route it through approvals, which CTA argues should have been “ample time.”

Under the circumstances, we agree with CTA that it should have the option next month “to exercise [an] immediate right to appeal or to await a decision on its claim.” *CTA I, LLC v. Department of Veterans Affairs*, CBCA 5800, 17-1 BCA ¶ 36,829. VA’s institutional forgetting to prepare to process this foreseeable claim has resulted in VA’s having to ramp up after receiving the claim and has caused “undue delay.” 41 U.S.C. § 7103(f)(4). The review timeline suggested by CTA would have been more reasonable.

We emphasize that we cannot literally “order” the contracting officer to issue a decision, *see CTA*, 17-1 BCA ¶ 36,829, and that CTA need not appeal from a deemed denial unless it wants to. We are “only . . . shorten[ing] an extension that a contracting officer has granted himself within the sixty-day . . . window.” *Id.* “It is also to be borne in mind that the issuance of a final decision and the taking of an appeal does not mean an end to the pursuit of alternatives to litigation for resolving disputes.” *VECO, Inc.*, DOTCAB 2961, 96-1 BCA ¶ 28,108 (1995).

Decision

The petition is **GRANTED** as modified, making the deadline for a contracting officer’s decision Monday, June 15, 2020.

Kyle Chadwick
KYLE CHADWICK
Board Judge

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge