

CONSEQUENCES OF GOVERNMENT DELAY OR INDECISION

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A recent Armed Services Board decision demonstrates how important it is for the Government to respond to contractor-raised issues in a timely manner when problems arise during the administration of a contract. *Air Services, Inc.*, ASBCA No. 59843, March 17, 2016. When a construction contractor discovered that a new Heating, Ventilating and Air Conditioning (“HVAC”) system was too heavy to install on the roof of an existing building, the Government delayed making a decision for 2 ½ months (well past the contract completion date) in directing a modification. This forced the contractor to incur additional costs for its staff and laborers beyond the completion date. The Board awarded \$41,000 in damages.

The Army issued a contract on September 26, 2012 to Air Services to design and renovate a building located on Fort Belvoir, VA. The Army’s notice to proceed established November 29, 2013 as the completion date. In late September 2013, Air Services discovered that the new HVAC system that was to be installed on the roof of the building might be too heavy for the existing structural steel, and made an inquiry to the government about this problem. Although the government stated it intended to use salvaged steel to add to the roof supports, no such steel was available. On November 4, 2013, Air Services submitted a proposed change order to the government to add structural steel support framing. However the government did not issue a modification funding additional structural support until December 16, 2013, well past the established contract completion date.

In a brief decision, the Board noted that it was clear that the project had been delayed as a result of the HVAC/steel issue, because the existing roof structure could not support the contractually required new HVAC system. Air Services could only procure and install the required steel in January 2014, and only after the steel was installed could it install the new HVAC system. Although there were some costs provided in the Army’s modification arising from installation of the structural steel, Air Services was not compensated for the associated delay keeping its project manager and superintendent on the job past the contract expiration date until early April—a recoverable cost because of the government’s delay. The Board awarded Air Services those costs.

It is reasonable to ask why, with an important system in a construction contract that could not be installed because of structural issues, did the government delay for 2 ½ months? The government was well aware of the completion date. Clearly, some resolution of the problem could have been issued by the government in a timely manner, but it was not.