

FACT FREE ARGUMENTS OF A CONTRACTING OFFICER

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When a contractor submits a claim to a contracting officer (“CO”), there are two possible deadlines for a final decision:

- For claims of \$100,000 or less, a decision must be made upon the contractor’s request within 60 days of receipt by the CO. 41 USC § 7103(f)(1) (Contract Disputes Act).
- For claims exceeding \$100,000, the CO may make a decision, or provide notice to the contractor within 60 days of claim submission, but the decision must be issued within a reasonable time, accounting for size, complexity and adequacy of information provided. 41 USC § 7103(f)(2)-(3).

Failure to provide a decision or a notice within the statutory time frame means the contractor may deem the claim denied and authorizes an appeal. 41 USC § 7103(f)(5).

In *North Wind Const. Servs, LLC*, ASBCA 63641 et al, April 3, 2024, the Armed Services Board considered claims of over \$800,000 for costs in building a haul road relating to access, and deemed them denied.

In ruling on the claim, the Army sought more time beyond the 60 statutory days and simply stated that “the contracting officer required additional time to study lengthy exhibits and consult with technical experts. [The CO] offered no evidence, such as a declaration or affidavit from the CO, supporting that assertion.” Because the government failed to present any evidence supporting the reasonableness of the decision the CO established, the Board noted that his statements were “fact free” and therefore the Board could not conclude that the CO’s inaction by the appeal date was reasonable. The Board stated “the absence of testimony from the contracting officer supporting government counsel’s arguments is deafening”. Therefore the claim was deemed denied.

The 60 day deadline (or an alternative deadline that is statutorily permissible) provides an important avenue of potential action if a CO fails to meet it or justify a time increase. The contractor has the ability to take an immediate appeal. Prior to the “deemed denied” words in the Contract Disputes Act, decisions on claims could take CO’s years to decide, and the contractor had no recourse.

Takeaway. Hold the CO’s feet to the file and make them comply with the timeframes in the Contract Disputes Act. If they fail, or do not properly justify an extension of the 60 day timeframe, deem your claims denied and take an immediate appeal. Do not wait

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