



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

ORDER ON FURTHER PROCEEDINGS: February 2, 2007

CBCA 618-ISDA, 619-ISDA, 620-ISDA, 621-ISDA, 622-ISDA, 623-ISDA,
624-ISDA, 625-ISDA

KODIAK AREA NATIVE ASSOCIATION

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Respondent.

Lloyd Benton Miller, of Sonosky, Chambers, Sachse, Miller & Munson, LLP,
Anchorage, AK, counsel for Appellant.

Barbara Hudson, Office of the General Counsel, Department of Health and Human
Services, Rockville, MD, counsel for Respondent.

STEEL, Board Judge.

ORDER

On February 1, 2007, the Board docketed the appeals of Kodiak Area Native
Association v. Department of Health and Human Services. Accordingly, it is hereby
ORDERED:

The Board's proposed rules of practice are pending approval of the Office of
Management and Budget. Until the rules are published, the parties are generally referred to
the Federal Rules of Civil Procedure for guidance.

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Appeal File

The parties are directed to produce an appeal file, as follows.

Within 30 calendar days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed. Exhibits will be numbered and will include:

- (1) The contracting officer's decision, if any, from which the appeal is taken;
- (2) The contract, if any, including amendments, specifications, plans, and drawings;
- (3) All correspondence between the parties that are relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;
- (4) Affidavits or statements of any witnesses concerning the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;
- (5) All documents and other tangible things on which the contracting officer relied in making the decision, and any related correspondence;
- (6) The abstract of bids, if relevant; and
- (7) Any additional existing evidence or information necessary to determine the merits of the appeal, such as internal memoranda and notes to the file.

(b) Organization of the appeal file. Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The loose-leaf binders cannot exceed four inches in depth. The numbering shall be consecutive, 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 exhibits. In addition, the pages within each exhibit containing more than three pages 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 include the date and a brief description of each exhibit and shall identify which exhibits, if any, have been filed with the Board in camera or under protective order or otherwise have not been served on the other party.

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(c) Service. The respondent shall serve a copy of the appeal file on the appellant at the same time that the respondent files it with the Board, except that (i) the respondent need not serve on the appellant those documents furnished the Board in camera pursuant to Rule 9(c), and (ii) the respondent shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the respondent must serve on the appellant a list identifying the specific documents filed in camera or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(d) Submission to the Board by the appellant. Within 30 calendar days after the respondent files its appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the respondent. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board, and shall organize the file as required by (b) above.

(e) Submissions on order of the Board. The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits. The Board may also require a party to file either copies of electronic records or printed versions of electronic records.

(f) Lengthy or bulky materials. The Board may waive the requirement to furnish the other party copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits if furnishing copies would impose an undue burden, so long as the materials are available to the opposing party for inspection.

(g) Use of appeal file as evidence. All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the evidentiary 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 without a hearing, at 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.

(h) When appeal file not required. Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

Complaint and Answer

Please note that appellant's complaint in this appeal is due to be filed with the Board on or before March 2, 2007. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any

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other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim. A copy of the complaint must be sent directly to Government counsel.

No later than thirty calendar days after the receipt of the complaint, the Government's answer to the complaint must be filed with the Board. The answer should set forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. One-word responses stating an allegation is denied are discouraged. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by subparagraph (e) of this rule. The Board will inform the parties when it enters a general denial on behalf of the respondent. A copy of that answer must be sent directly to the appellant.



Candida S. Steel
Board Judge