

ORIGINAL

FILED
SEP 30 2005
U.S. COURT OF
FEDERAL CLAIMS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

K-CON BUILDING SYSTEMS, INC.,)
)
Plaintiff,)
)
 vs.)
)
UNITED STATES OF AMERICA,)
DEPARTMENT OF HOMELAND SECURITY,)
UNITED STATES COAST GUARD,)
)
Defendant.)
 _____)

No.: 05-10540
Judge: _____

COMPLAINT

The Plaintiff, K-Con Building Systems, Inc. (hereinafter "K-Con") complains of the Defendant herein as follows:

JURISDICTIONAL and FACTUAL ALLEGATIONS

1. K-Con is a corporation organized and existing under the laws of the State of South Carolina and at all times relevant herein was in the business of construction, including construction of metal buildings.
2. The Defendant, the United States of America, is a Defendant in this action by virtue of the actions and omissions of its agency and instrumentality, the Department of Homeland Security, United States Coast Guard (hereinafter the "Coast Guard").
3. This Court has jurisdiction over this matter pursuant to 41 U.S.C. § 609.
4. K-Con has timely and properly pursued and exhausted all administrative remedies prior to instituting this action.
5. This case involves a contract for the design and construction of a prefabricated metal

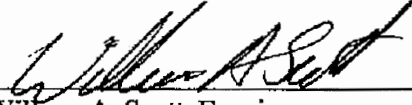
building for use as a cutter support building for the United States Coast Guard in Port Huron, Michigan, under Contract No. DTCG47-03-F-3EFK24 (GSA Contract No. GS-07F-0216L) (hereinafter the "Contract").

6. The Contract generally required K-Con to design and build a prefabricated metal building for the Coast Guard to be constructed in Port Huron, Michigan. During the course of the design and construction, the Coast Guard changed and modified the Contract in among other ways, by failing to properly review and approve drawings submitted by K-Con, and directing K-Con to perform additional work that was not required by the Contract.
7. The Coast Guard failed to extend the Contract as a result of its actions, or inactions, and as required by the Contract because of the changes to the work directed by the Coast Guard.
8. Despite the Coast Guard's actions, K-Con continued performance of the Contract as directed by the Coast Guard.
9. By letter dated July 28, 2005, K-Con submitted a claim and demand for remission of liquidated damages to the Coast Guard, and requested a contracting officer's final decision.
10. On September 12, 2005, the Coast Guard issued a final contracting officer's decision (Exhibit 1 attached hereto) denying K-Con's claim and demand for remission of liquidated damages.
11. The assessment and withholding liquidating damages was improper and without cause.

WHEREFORE, K-Con prays for judgment against the Coast Guard finding that: (1) the assessment of liquidated damages by the Coast Guard was improper and without cause; (2) K-Con is entitled to remission of liquidated damages and payment of \$109,554.00; (3) K-Con is entitled to interest on the amount withheld as liquidated damages; (4) K-Con is entitled to attorney's fees, and

for such other and further relief as this Court deems just and proper.

PEDERSEN & SCOTT, P.C.



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ATTORNEY FOR PLAINTIFF,
K-CON BUILDING SYSTEMS, INC.

Dated this 27 day of September, 2005.

09/13/2005 11:27 8437458436 SEP-12-2005 12:27 FDCC LANT 8527349557 P.01



Commanding Officer United States Coast Guard Facilities Design & Construction Center (Atlantic)

5505 Robin Hood Rd., Suite K Norfolk, Virginia 23513-2431 Staff Symbol: Phone: (757) 852-3449 FAX: (757) 852-3485

4200 Ser. No: 0621K September 12, 2005

PK P/A Melasa EC SALES PM Bill ESTIM SUP OTHER ACCTG

CERTIFIED MAIL RETURN RECEIPT REQUESTED

K-Con Building Systems 2728 Spruill Ave Charleston, SC 29405

Re: Contract No. DTCG47-03-F-3EFK24, Design and Construct Prefabricated Cutter Support Building, Port Huron, MI

Dear Mr. Stewart:

CONTRACTING OFFICER'S FINAL DECISION

Reference is made to your claim dated July 28, 2005 in the amount of \$118,950.68.

On January 20, 2004, Contract July 10, 1991, Contract No. DTCG47-03-F-3EFK24 was entered into between your company and the Government for Design and Construct Prefabricated Cutter Support Building, Port Huron, MI. The contract award price was \$582,641.00 with a contract completion date of November 20, 2004.

SUMMARY OF CLAIM

Your claim letter of July 28, 2005, received via fax, demands payment of \$118,950.68 plus interest for failure to pay invoice 12 and assessment of liquidated damages

FINDINGS OF FACT

In connection with your claim, I hereby make the following findings of fact:

Throughout the Request for Proposal and contract award stage of the procurement process, Paragraph H.8 Liquidated Damages was included in the contract specifications. Never during clarification discussions and contract negotiations did you question the use of the Liquidated Damages Clause. In our forbearance letter of November 16, 2004 you were reminded that you would be assessed Liquidated Damages if all work was not completed by November 20, 2004. In response to your email of December 6, 2004 questioning use of the Liquidated Damages clause, we responded by letter dated December 7, 2004. We advised you that we had no record of any "exception" being taken by you regarding the Liquidated Damage clause being included in the contract requirements. You were also reminded that once the contract was awarded, you were bound by all the contract requirements including the Liquidated Damages clause. Our records indicate you were the sole cause of missing the contract completion date. Our records

