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December 15, 2006

Cathy Broussard, Contracting Officer
U.S. Department of Homeland Security
United States Coast Guard
Facilities Design & Construction Center
5505 Robin Hood Road, Suite K
Norfolk, VA 23513-2431

2006 DEC 20 PM 1 27

**RE: CLAIM FOR ADDITIONAL COMPENSATION
REQUEST FOR CONTRACTING OFFICER'S FINAL DECISION
Contract No. DTCG47-03-F-3EFK24 - PORT HURON**

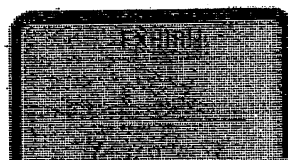
Dear Ms. Broussard:

Pursuant to the Contract Disputes Act and the disputes clause of the contract, the contractor, K-Con Building Systems, Inc. (K-Con), hereby demands payment of \$196,126.38 plus interest, for additional work and an extension until May 25, 2006 due to delays as a result of direction by the government on the above-referenced contract, as set forth below. These matter are considered in dispute based the government's direction and failure to modify the contract as required by the Changes Clause of the Contract. A Final Contracting Officer's Decision is requested within sixty (60) days as required by the Contract Disputes Act. The required Certification is attached.

The USCG made a cardinal change to the contract by changing the entire design and construction requirements from a "design-build" contract to a "build what I direct contract," thus entitling K-Con to the total costs incurred on the contract. This contract was the last of three contracts issued by the USCG to K-Con for construction of metal buildings, the other buildings being constructed at St. Petersburg, FL and Elizabeth City, NC. The original RFP issued by the government included Sections A through M, and detailed specifications for construction, Specification 09-L6006 dated January 31, 2003. Amendment No. A003 to the Solicitation deleted the original RFP package in its entirety and inserted a new RFP package. The new/revised RFP included completely new specification requirements identified as SFRL 09-L6006.

As a result of disputes over the design/build requirements in the first two contracts, K-Con specifically advised the USCG that this contract was based on its Proposed Scope of Work dated December 8, revised on December 13, 2003. By letter dated January 19, 2004, K-Con made clear that "In

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the event of discrepancies between the specifications and the proposed Scope of Work, the proposed Scope of Work will take precedence unless negotiated otherwise between K-Con and the Contracting Officer." In a subsequent email dated January 27, 2004, K-Con reiterated that it "wanted to be certain that everyone involved is crystal clear that K-Con's performance on this project will be in accordance with the clarifications outlined in our proposal and as defined in the referenced letter, and not in strict compliance with the specifications and/or drawings." The USCG, Cathy Broussard, responded "I've put that letter behind my award document and also put a note to the file in case I'm not around that once you clarified our concerns prior to the final proposal that we had no other concerns with your proposal conflicting with your RFP." Despite the above statements regarding K-Con's proposal and the specification requirements, after Contract award the Contracting Officer wrote that "it is not within your authority to exclude or take exception to our contract requirements." The above set the stage for construction of the metal building with an inherent conflict between the Scope of Services and K-Con's proposal and the question of which requirements were required.

The following are some, but not necessarily all, of the changes directed by the USCG that totally changed the requirements of the Contract.

1. After award of the contract, the USCG advised K-Con that it intended on making significant changes to the design that precluded K-Con from continuing with the design without breaching its duty to mitigate damages.

Eight days after the award, the USCG asked K-Con if the eve height of the building could be changed from 10' to 10'4". For the next month, the USCG repeatedly advised K-Con that it intended on making major changes to the design and requested that K-Con provide information on the requested changes. The USCG requested changes in the eve height of the building, the door widths to accommodate the boats, the size of the bays which required the entire building to be wider, changing the monorail required in the specifications to a 2 ton bridge crane, and changing the code requirements because gas tanks for the boats would be in the building. The USCG directed K-Con not to proceed on any of these items until notified by the Contracting Officer (email dated 2/18/04) which K-Con understood to be a stop work order on the design until the USCG made up its mind. Because of the scope and magnitude of the changes, K-Con could not proceed with the original design without incurring substantial costs when the changes were made as everyone expected and led to believe. To proceed with the original design with knowledge of the intended changes would have been a breach of K-Con's duty to mitigate damages. As a result of the USCG's actions, K-Con is entitled to an extension from January 20, 2004 when the contract was awarded until March 1, 2004, when it was advised the above changes would not be made and to continue with the design, for a total of 41 days.

2. The USCG directed changes in the design that completely changed the scope of work and delayed the project.

The contract was a design/build contract based on the Scope of Services included with Amendment A003 to the RFP. The Scope of Services required K-Con to construct a CST building of 3276 gross square feet, envisioned to be 36' by 91' using drawing A101 for a concept layout. The 3 drawings provided with the RFP were for general conceptual layouts. (Scope of Work, paragraph 1). The Scope of Services also required that K-Con provide 50%, 90% and 100% submittals as specified in paragraph 2.9, 2.10 and 2.100. The USCG was required to provide review comments on the submittals in

accordance with paragraph 2.8. The USCG directed K-Con to incorporate all of its review comments into the drawings when it threatened to withhold retainage until "all previous review comments are incorporated." Therefore, K-Con is entitled to a change for every comment made by the USCG on the submittals that is not specifically required by the Scope of Services.

The following are some, but not all, of the changes directed by the USCG to the design of the building during the drawing review process.

A. 35% DRAWING APPROVAL

Drawing A1: USCG directed K-Con to make the building larger and directed that: "Although outfitting layouts are not technically required until the 100% submittal, we are requested that any subsequent submittals show the furnishings and equipment."

Drawing AI - Floor Plan: USCG directed that "Overall building dimensions shall include provisions for minimum 1" air space between the inside face of the veneer brick and the sheathing."

The USCG directed K-Con to provide small vision panels in the exterior doors leading from the Hall, MK Shop and Cutter Parts Storage.

The USCG directed the installation of a hose bib on the north and south faces of the building.

B. 50% DRAWING APPROVAL (Similar comments were made on the 90% submittals).

Architectural Review Comments

Comment 6: USCG directed that the Telecomm Room was too large and had to be made smaller.

Electrical Review Comments

Comment E2-1: USCG required security lighting on all sides of the building.

Comment E2-3: USCG directed that 4' light fixtures be used as opposed to 8' long florescent light fixtures.

Mechanical Comments

Comment M2-3: USCG directed isolation pads be installed between the furnace and the framing.

Comment M2-4: USCG recommended a different louver detail than required.

Comment M3-6: USCG required showing & installation of articulated welding arm scoop exhaust system.

Comment M3-7: USCG required deletion of ceiling fans.

Comment M3-8: USCG directed changes to the toilet/locker areas.

Comment M3-9: USCG directed a return be installed from the multi-purpose room, the telecom room and the supervisor's room.

Comment M1-11: USCG directed air amounts for furnace.

Comment M1-13: USCG directed additional air intakes from outside air.

General Comments

Comment 1. USCG directed K-Con to install two furnaces as opposed to one required by the specifications and scope of work. The Scope of Services, SFRL 09-L6006, required K-Con to provide a heating system that maintained the spaces between 68-72 degrees Fahrenheit during the heating season. (Par. 2.5). While K-Con originally proposed to use two furnaces to meet the specification requirements, during the design of the system it was determined that one furnace would be sufficient, and one furnace was shown on K-Con's first submittal drawings. The USCG refused to accept one furnace, and directed K-Con to install a second furnace. The additional cost of the furnace was over \$8,000. Work on this system was not completed until the building was accepted in May, 2005.

Comment 3. USCG directed that in lieu of providing air from the HVAC system directly, that conditioned air (summer and winter) be drawn from one of the surrounding areas via an inline supply fan and pressurize the Telecomm room, and install a louver door in the Telecomm Room.

Civil and Structural Comments

Drawing S-4: USCG directed different details for installation.

Telecommunication Comments

Comment 2: The USCG directed that the door for Telecommunications Room have a louvered partition.

In addition to the comments on the drawings, the USCG directed other changes through correspondences. For example, the USCG directed that mechanical work in the HVAC system be installed to meet the ICC International Mechanical Code which was not specifically required by the scope of work. Likewise, the Scope of Services did not require K-Con to prepare a TAB report. While K-Con originally proposed to prepare a TAB, the USCG required K-Con to do much more than expected by K-Con.

As a result of the USCG's total change in the design and construction requirements, K-Con is entitled to all additional costs and an extension in the contract performance period resulting from those changes. Because the directed changes were so extensive and caused disruption throughout the entire contract performance period, the damages are based on a modified total cost. The total modified costs of the work was \$609,012.00, however, the USCG has paid only \$412,885.62, which leaves an outstanding balance of \$196,126.38.

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Please call me if you have any questions or would like to discuss any issues.

With regards,



Patrick J. Kiernan
K Con

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