DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND, MARIANAS
PSC 455, BOX 195
FPO AP 96540-2937

IN REPLY REFER TO:
5720
Ser 00/155
10 Jun 16

John Camacho
233 Pangelinan Way
Barrigada, GU 96931

Dear Mr. Camacho:

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST 16-011

This letter responds to your Freedom of Information Act (FOIA) request dated June 7, 2016, in which you seek a copy of our response letter to Pacific West Builder's formal claim pertaining to the Redhorse Cantonment Facility Project. This office received your perfected request on June 8, 2016, and assigned to it file number 16-011.

We have reviewed the enclosed documents, which are responsive to your request, and they are released to you in their entirety.

The fees incurred to process your request amounts to twenty four dollars and twenty five cents ($24.25) for search and review. Please forward a check or money order, payable to the "Treasurer of the United States" for the stated amount, to the address stated above and to the attention of Ms. Eileen Sanchez, Comptroller Office, within 30 calendar days from the date of this correspondence. Please reference FOIA file number 16-011 with your remittance.

Further questions concerning your FOIA request should be directed to Thomas Ngiratereged at (671) 349-2277 or via e-mail at thomas.ngiratereged@fe.navy.mil.

Sincerely,

R. M. ALVARADO
Commander, Civil Engineer Corps, U.S. Navy
By direction

Enclosure 1. KO Final Decision-Cantonment Claim-Final

rcvd John Camacho
6/10/16

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Enclosure 1. KO Final Decision-Cantonment Claim-Final

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND MARIANAS
PSC 455, BOX 195
FPO AP 96540-2937

IN REPLY REFER TO:
Ser: RA140361
03 Jun 2016

Pacific West Builders
Attn: Patricia I. Romero
President, CEO
1248 Coolidge Ave.
National City, CA 91950

SUBJ: CONTRACT N40192-10-D-2810-0003, RED HORSE CANTONMENT OPS, FACILITY, AAFB GUAM; **CONTRACTING OFFICER FINAL DECISION**

Enclosures:
1. RFP Part 3, para 2.4 titled Appropriate Design
2. RFPL Page 8, Item 6, Design Build Project and RFP Package are Preliminary
3. Architectural Compatibility and Base Design Standards (ACBDS), Andersen Air Force, Guam, Para 5.2.1.3.1 Roof Coating Systems
4. RFI No. G-038 Product Data for Foam-Lok FL 2000 to be Installed in the Under Slab of the Roof
5. UFC 3-600-01, Chapter 2, Section 2-7 Insulation, Subsection 2-7.2 Exceptions to Insulation Criteria/2-7.2.1 Flame Spread – No Smoke Developed Rating Limitation
6. 60% Design Meeting Minutes
7. Variations Specification: RFP Part 2 - Section UFGS 01 33 10.05 20 – page 17, para 3.2
8. RFP Amendment 006 Item 3
9. RFP Part 3, Project Program, para 4.3, Exterior Character, Roof Insulation
10. Final Design Submittal 013A Dated 6 Dec 2012; PWB Certification Is In Compliance W/Contract
11. RFP Part 2 Section 01 33 10.05 20, Para 3.3.2.1, Government Review or Approval
12. NFAS 5252.236-9312, Design-Build Contract – Order of Precedence (AUG 2006)
13. Government TIA Conducted by Scheduler Sean Yi
14. Modification 04 dated 13 Apr 2015 w/e-mail from Pat Romero/PWB Dated 10 Apr 2015 Stating PWB Does Not Waive Their Rights
15. Contracting Officer Letter dated 27 Mar 2015
16. Concept Design Workshop Meeting Minutes dated 14 Jun 2012
17. RFP Part 2, UFGS Section 01 33 10.05 20
18. Material and Workmanship Clause FAR 52.236-5
19. Base Pass Delay E-mail from PWB Chelle Camacho Showing 57 days
20. RFP Part 3, G-41 Exterior Electrical Service
21. Red Zone Meeting held on 19 Dec 2013
22. 5 Jun 2014 Contracting Officer Letter in regards to the Proposed Sketch and response to PWB's 29 May 2014 Agenda
23. RFI G063 dated 15 Jun 2014
24. Contracting Officer Letter dated 17 Jul 2015
25. Specifications Discrepancy LOC; Dated 18 Feb 2014 and 27 Feb 2014
26. REA dated 31 Jan 2015/revised 16 Feb 2015
27. Letter Of Concerns (LOC's) (10 LOC's)
28. Defaults Clause, FAR 52.249-10
29. Schedule for Construction Clause, FAR 52.236-15
30. Forbearance Letter/REA Time Extension Request
31. Non Compliance Notices (17 NCN's)
32. FAR Clause 52.246-12, Inspection of Construction

33. Safety Incident Slides
34. FAR Clause 52.232-5, Payments under Fixed Price Construction Contracts
35. Remaining Punchlist

Dear Ms. Romero,

This letter is in response to your request for a Final Decision in the Certified Claim dated 29 Jan 2016 and received via Federal Express on 02 Feb 2016.

The following matters are pertinent to the claim:

Contract Data: The subject contract was awarded by NAVFAC Marianas under the Small Business Multiple Award Construction Contract (SB MACC) on 28 Apr 2012 to Pacific West Builders (PWB) in the amount of $9,490,730.00 with a completion date of 7 Oct 2013. The contract was awarded in response to Request for Proposal (RFP) Ser: OPI-ASA/09649 issued 30 Dec 2011 with a total of 8 amendments.

Modifications 01 through 03 decreased the contract in the amount of ($57,120.00) and extended the contract completion date to 15 Dec 2013.

The Beneficial Occupancy Date (BOD) was 26 Nov 2014; 346 days after the CCD.

PWB submitted an REA on 31 Jan 2015/revised 16 Feb 2015 requesting a 349 day time extension and additional cost of $1,632,769.70 for alleged Government delays. A response was issued by the Contracting Officer on 27 Mar 2015 stating the Government will issue a 288 day time extension and assess liquidated damages (LD) for 58 days at an LD rate of $5,850 per day, for a total of $339,300. As a result of the REA dated 31 Jan 2015/revised 16 Feb 2015, modification 04 extended the contract to 29 Sep 2014. PWB submitted a revised REA dated 5 May 2015 disputing the Government's position and requesting additional cost of $1,107,765.06 and 304 day time extension. The Government issued a response to their revised REA dated 17 Jul 2015 denying their REA in its entirety (compensated under mod 04). As a result, PWB submitted this claim dated 29 Jan 2016/received on 02 Feb 2016 with a proper certification.

Note: Although modification 04 appears to be signed as a bilateral modification, it was in fact "not" a bilateral modification. PWB did not agree with modification 04 and did not give up their rights to submit an REA/Claim for further compensation per their e-mail dated 10 Apr 2015. Therefore, the Government considered modification 04 open for both parties.

The contract work is 96.34% percent complete, however, there are still punchlist items that remain and PWB has refused to complete the punchlist until this claim is settled. As of the present date, 18 progress payments have been made in the total amount of $9,088,459.98. Retention in the amount of $345,150.02 has been withheld for liquidated damages.

The Government's response for each alleged delay in the claim is provided below:

I. Multiple Delays to Procurement and Installation of Roof System:

A. Conflicts in the Requirements for Roof Insulation:

PWB Contends:
The RFP contained conflicts for the roof insulation which made compliance with all contract requirements impossible. Sections of the RFP directed the placement of the spray-on foam insulation on the underside of the roof, while placement of the spray-on foam on the underside of the roof is contra-

indicated by other RFP requirements. The government is the maker of the RFP and the Contract, and is wholly and solely responsible for conflicts and/or ambiguities contained herein. Prudently, PWB recommended a solution which gave preference to the Life Safety requirements of the UFC. The government agreed with the solution and approved the adoption of the solution at the 60% design level, asking only for product data submittal to verify wind load resistance. At the 60% design level, the government's attention was very specifically drawn to that design solution. The government further ratified that acceptance at the 100% pre-final design, and the final design, both of which contained the design of the polyurethane foam on the top side of the roof structure.

Government's Position:

1. *Alleged Conflict in Specifications*: It is significant to note that this project is a "design build" contract. The RFP sets forth the project's minimum requirements which shall be used by the Design-Build contractor to design, document, and construct a complete and usable facility. As the designer of record, the design-build contractor shall be responsible to provide a fully coordinated and complete design in accordance with **all** applicable codes, regulations, and contract requirements. The designer of record shall be responsible for professional quality, technical accuracy, and the coordination of all final designs, drawings, and specifications (Enclosure 1 and 2).

The Government's roof specifications are not inherently in conflict. PWB's claimed conflict in specifications arose solely as a result of PWB's chosen design. PWB's decision to design exterior applied insulation did not comply with Architectural Compatibility and Base Design Standards (ACBDS) (Enclosure 3). PWB eventually installed a foam insulation product (FOAM-LOK FL 2000) with thermal barrier (DC 315) on the underside of the building. The combination of these products and their placement on the underside of the roof complies with all contract requirements including RFP Part 3, Section 5 requirements, UFC 3-600-01 Life Safety Standards (enclosure 4) as well as the "underside" installation requirements of the ACBDS. This implemented design solution is dispositive proof that a compliant design was possible. If PWB timely provided such a compliant design solution as was required by the contract, the roof would not have been placed in delay.

PWB's Designer of Record (DOR) could have alternatively proposed an exception to the SD rating IAW UFC 3-600-01, Chapter 2, Section 2-7 Insulation, and Subsection 2-7.2 Exceptions to Insulation Criteria/2-7.2.1 Flame Spread – No Smoke Developed Rating Limitation stating ***Compliance with the SD rating** limitation was **not required*** (enclosure 5). Instead, PWB claimed the Government's specifications were to blame.

2. *Alleged Government Agreement at 60% design Meeting*: The Government did not agree to PWB's roof insulation solution at the 60% design meeting. As reflected in the 60% design meeting minutes, (Enclosure 6) Government representatives requested more information from PWB on its proposal to use an exterior foam roof system. The referenced request for additional information is dispositive proof that no final resolution was reached at the 60% design meeting. The normal process is to submit a "variance" for Government approval via RFI identifying the variance IAW RFP Part 2 - Section UFGS 01 33 10.05 20 – page 17, para 3.2 (enclosure 7). PWB's DOR failed to follow this contract procedure.

The Government also highlights PWB's failure to comply with RFP Amendment 006 Item 3 (enclosure 8), which provides that any deviations from the Architectural Compatibility and Base Design Standards "require written approval from the Base Civil Engineer." The applicable process for this requirement is for PWB's DOR to submit a formal RFI identifying the variance for Base Civil Engineer approval (Government approval). PWB's DOR failed to follow this contract requirement.

The variance and deviation processes noted above are important as they provide a means for clear and formal notice of design non-compliance to the Government. These processes also serve to mitigate project oversight challenges inherent in large scale document reviews such as this one where the 100% and final design specifications exceeded 1,000 pages and 100 sheets in the drawings. PWB's failure to adhere to these processes reinforces the Governments position that PWB's planned deviations from contract roofing requirements were not provided to the Government in a sufficiently clear and formal way

so as to facilitate fully informed approval. PWB left the 60% meeting with an unresolved issue. Instead of pursuing a resolution with the tools noted above, PWB avoided the process by incorporating its unapproved and unresolved plan into its 100% and final design.

3. *Alleged Government Ratification by Approval of the 100% Design*: Both the ACBDS (Enclosure 3) and RFP part 3, page 23 Section 4.3 Roof Insulation (Enclosure 9) required roof insulation on the "underside" of the roof deck. Despite PWB's current acknowledgement of final design non-compliance, PWB certified (enclosure 10) that the final design complied with all contract requirements. The Government's approval of the final design reasonably relied upon PWB's incorrect certification.

Even though the Government approved the final design, it did not immunize PWB from its obligation to comply with contract requirements. RFP Part 2 Section 01 33 10.05 20, para 3.3.2.1, Government Review or Approval (enclosure 11), and NFAS 5252.236-9312 (enclosure 12) state that Government review or approval of any portion of the proposal or final design shall not relieve the contractor from responsibility for errors or omissions. PWB failed to follow set processes designed to specifically call out design deviations to the Government as noted above, then certified that its non-conforming final design complied with all contract requirements, and now seeks to absolve itself of any responsibility because Government personnel failed to immediately catch the error. This is exactly the kind of situation that RFP Part 2 Section 01 33 10.05 20, para 3.3.2.1 and NFAS 5252.236-9312 were designed to protect the Government against.

Summary: The RFP specifications were not in conflict and as the Design-Build contractor, PWB was responsible to prepare and construct a design which complied with all RFP requirements. PWB failed to comply with the "variance", "deviation", and certification procedures in the contract designed to highlight non-conforming designs to the Government. PWB's final design failed to comply with ACBDS requirements. Thus, PWB failed to give clear and formal notice of its design's deviation from contract requirements. Consequently, the Government did not give informed approval of PWB's non-conforming roof design and appropriately required adherence to all applicable contractual requirements when the non-conforming roof system was discovered.

Based on the above, PWB's claim has no merit for the Roof Insulation issue. PWB is responsible for 402 days of contractor delay per Government Time Impact Analysis (TIA) (Enclosure 13).

B. 1st Set of Late Review Comments by the Government:

PWB Contends:
The mandated change from the previously accepted final design is the primary delay to the procurement of the roof system.

Government's Position:
Based on the above, PWB's claim has no merit for the Roof Insulation issue. PWB is responsible for 402 days of contractor delay per Government TIA (Enclosure 13).

C. Slab Delay:

PWB Contends:
Installation of the roof insulation could not happen until the slab repair work was complete.

Government's Position:
The slab replacement had no impact to the procurement and application of the spray-on insulation. Based on PWB's construction schedule, the foam insulation could have been procured during the completion of the slab; however, it was not ordered in a timely manner. Further, the foam could have been installed during the period where the defective slab work was in place and before the demolition began when the dust and particulate matter disruptions would not have been an issue.

In addition, PWB is responsible for the roof installation delay that expands 402 days per Government TIA (Enclosure 13). If the roof insulation was completed as scheduled it would not have been impacted by the slab delay.

D. Base Pass Delay:

PWB Contends:
The project sustained time impact due to the Government's inability to provide passes for Andersen Air Force Base.

Government's Position:
PWB is responsible for the roof installation delay that expands 402 days per Government TIA (Enclosure 13). If the roof insulation was completed as scheduled it would not have been impacted by the base pass delay.

Further, the Government previously compensated PWB 57 days for base pass issues to include extended overhead cost in the amount of $161,544.84 (reference Contracting Officer letter dated 27 Mar 15 and Modification 04 dated 13 Apr 15) (Enclosure 14 and 15). PWB has not provided any additional quantification or justification for additional days.

E. 2nd Set of Late Review Comments by the Government:

PWB Contends:
Per Concept Design Workshop meeting minutes (enclosure 16), on 18 Feb 2014 the government delayed the project by rejecting the final design specification 07 54 00 because there was not a corresponding United Facilities Guide Specifications (UFGS) specification. PWB contends that there was zero benefit between what was in the final design 07 54 00 and UFGS 07 14 00.

Government's Position:
PWB deviated from the RFP requirement for fluid applied waterproofing and used an outdated specification section. RFP Part 2, UFGS Section 01 33 10.05 20 (Enclosure 17), required the contractor to use "current" UFGS specifications at the time of award. PWB's final design used section 07 54 50 Fluid-Applied Roofing dated May 2011 which did not exist in the UFGS. There was a UFGS specification for Fluid-Applied Waterproofing section 07-14-00 dated Feb 2012 in which the contractor should have used for the final design (task order awarded 28 Apr 2012).

If the requirement to use the correct UFGS specifications per RFP (enclosure 17) caused a delay to the project, this is the fault of the contractor and not the Government.

Further, PWB is responsible for the roof installation delay that expands 402 days per Government TIA (Enclosure 13). If the roof insulation was completed as scheduled it would not have been impacted by the 2nd set of late review comments.

F. Time and Cost Impact Analysis:

PWB Contends:
Time Impact: Contract Extension: 247 days
Cost Impact: Additional Work $246,943.03
Compensable Days 247 @ $2,721.17: Total $672,128.99

Total: $919,072.02

Government's Position:
Based on the above, PWB's claim has no merit for the Roof Insulation issue. PWB is responsible for 402 days of contractor delay per Government TIA (Enclosure 13).

II. Delays Sustained To The Construction Of The Slab On Grade:

A. Slab Installation and Removal:

PWB Contends:
Although the slab was out of tolerance in terms of smoothness and slope, the Government should have allowed PWB to test and repair the slab vice remove it.

Government's Position:
The Government agrees the slab was out of tolerance in terms of smoothness and slope and that the Government should have allowed PWB to test and repair the slab vice replace it. The Government approved a 107 day time extension and additional cost of $368,511.03 under modification 04 (Enclosure 14 and 15) which was set off against Liquidated Damages (LD's) owed to the Government.

The Government considers the slab issue a contractor delay for the slab being out of tolerance, Government delay for the direction to replace the slab vice repair, and concurrent delay to the roof insulation delay per Government TIA (enclosure 13). Further, PWB has been overcompensated for this delay by the Government as the Government has not credited itself for the time PWB would have taken to repair vice replace the out of tolerance slab:

- PWB readily admits that the original slab installation resulted in a slab with a surface which was out of tolerance to the project specifications in terms of smoothness and slope. IAW FAR Clause 52.236-5 Material and Workmanship (enclosure 18), "all equipment, material, and articles incorporated into the work covered by this contract shall be "new" and of the most suitable grade for the "purpose intended".
- The facility is designed for heavy equipment and any major repairs would only reduce the life span of the floor. In good faith, PWB was previously compensated for the slab replacement in modification 04 for time (107 days) and cost ($368,511.04). The $368,511.04 was off-set with LD's.
- The Government would have been entitled to a downward adjustment in cost for the "repair" of the slab if replacement was not issued.
- The Government suspended work from 14 Aug 2013 to 23 Aug 2013 for a total of 9 days. The suspension of work allowed the Government to assess the condition of the slab pending the Government's decision on how to proceed. This 9 day period was reasonable and the result of the contractor's initial performance failure.
- The suspension of work was lifted on 23 Aug 2013 with direction to replace rather than repair. The slab replacement was completed on 22 Nov 2013 for a total of 91 calendar days.
- The Government estimates it would have taken PWB up to 14 weeks to repair the slab to comply with project specifications had it been allowed to proceed with repair over replacement:
    - KTR/DOR Field Verification/Slab inspection/testing (1-2 weeks)
    - DOR direction/drawings/Government NTP (1-2 weeks)
    - Material/Remediation work plan and/or submittals (1 week)
    - Government Approval of submittals (1-2 weeks)
    - Material order/procure (1-2 weeks)
    - Remediation work (1-3 weeks)
    - Final inspection/testing/Government Approval/NTP (1-2 weeks)

Based on the above, the Government's previously approved 107 day time extension and additional cost of $368,511.03 under modification 04 (Enclosure 14) for all Government delays in regards to the slab delay.

The 107 day time extension and additional cost of $368,511.03 was off-set with LDs. However, PWB was over compensated for the 107 day time extension because the Government failed to consider the amount of time it would have taken PWB to repair the slab. Based on the above, it would have taken PWB 7 to 14 weeks to repair the slab. As described in Paragraph IV herein, the Government acknowledges that the alleged 35 day delay was a Government delay wherein the Government owes the contractor both time and cost. To mitigate the overcompensation, the Government will use the 35-day delay to offset the overcompensation that resulted from the 107-day time extension.

Based on the above the additional 6 day time extension request is hereby denied.

Additionally, the request for extended overhead cost for $307,492.21 is denied because the Government considers this portion of the claim contractor delay, Government delay and "concurrent" delay to the roof insulation delay.

B. Government Benefit Received:

PWB Contends:
Floor mounted electrical receptacles were installed at request of the Government and seeks compensation for time and cost.

Government's Position:
a. Under Slab electrical:
The Government added minor electrical work and acknowledges the resulting two day impact. PWB was compensated for this additional work under modification 04 (enclosure 14) for 2 additional days and additional cost of $1,307.80 that was off-set with LD's.

Time and Cost Impact Analysis:

PWB Contends:
PWB is requesting the following:

- 6 additional days (113 days minus the 107 days previously approved under mod 04)
- Compensable days/extended overhead for 113 days @ $2,721.17= $307,492.21
- Previously Approved under Modification 04:
  - Additional work for slab removal: $368,511.03
  - Electrical Conduit under Slab Delay: $1,307.80
  - Contract Extension: 107 days

Government's Position:
Based on the above, the Government's previously approved 107 day time extension and additional cost of $368,511.03 under modification 04 (Enclosure 14) for all Government delays in regards to the slab delay. The 107 day time extension and additional cost of $368,511.03 was off-set with LDs. However, PWB was over compensated for the 107 day time extension because the Government failed to consider the amount of time it would have taken PWB to repair the slab. Based on the above, it would have taken PWB 7 to 14 weeks to repair the slab. As described in Paragraph IV herein, the Government acknowledges that the alleged 35 day delay was a Government delay wherein the Government owes the contractor both time and cost. To mitigate the overcompensation, the Government will use the 35-day delay to offset the overcompensation that resulted from the 107-day time extension.

Based on the above the additional 6 day time extension request is hereby denied.

Additionally, the request for extended overhead cost for $307,492.21 is denied because the Government considers this portion of the claim "concurrent".

III. Delays Sustained Due to Inability To Obtain Base Access:

PWB Contends:
The project sustained significant delay due to the Government's inability to issue base passes for Andersen Air Force Base. PWB stated the base access delay create an impact that was greater than the day for day impact on activities for procurement and materials delivery and that it caused more than a 57 day delay, however, at this time PWB is not seeking additional days for compensation above and beyond the 57 days and $155,106.69 previously awarded.

Government's Position:
The Government previously compensated PWB 57 days for base pass delays that included extended overhead cost in the amount of $161,544.84 under modification 04 (enclosure 14). PWB has not provided any additional quantification or justification for additional days.

The 57 days previously approved under modification 04 was derived from PWB's breakdown/e-mail dated 6 May 2014 (enclosure 19).

IV. Delays Sustained To The Design And Construction Of The Underground Electrical Distribution System And The Supply Of Permanent Power To The Facility:

PWB Contends:
The RFP required the removal of some, but not all, overhead power distribution (OHPD) lines. During the design phase, Government personnel desired to have all OHPD lines removed and told PWB's designer, ELEN Consulting, that there was a 6 way switch with two spare positions available at SWGR-3 to facilitate this work. A subsequent site visit was conducted to confirm the presence of the referenced spare positions; however, the Government was unable to provide access to the SWGR-3 site. Predicated on this information, PWB proposed and designed the removal of all overhead power distribution lines as follows:

a. Utilize the spares on the SWGR-3 to provide power supply for the Operations Facility (believed to be a 6 way switch with two spare positions).
b. Place the four way switch and vault at the T junction where the OHPD would tie into the new UFGP to provide connection for a lateral to the 2 buildings to the south.
c. The Government shall install the duct banks, conduit, cable connections, etc to complete and commission the lateral to feed to the 2 buildings to the south.

PWB later discovered there were no spare switches at SWGR-3 where a 4 way switch was found instead of the expected 6 way switch. At the time of discovery and due to an error by PWB's designer, PWB had completed installation of a corresponding duct bank which was originally to be supplied by the Government. PWB was then advised to revert to the original requirements of the RFP which left some OHPD lines in place to serve adjacent facilities. PWB determined that they could not accomplish the requirements of the original RFP with the existing switchgear infrastructure. As a result, PWB submitted a new single line diagram that resolved the supply of permanent power problem, but at additional cost and schedule delay.

PWB also contends the Government caused two separate utility outage delays of 22 and 35 days respectively.

This resulted in the below cost and time impact:

- Time Impact: Contract Extension: 342 days
- Cost Impact: Compensable Days 342 @ $2,721.17=$930,640.14
- Previously Approved By the Government: Additional work $55,340.18

Government's Position:

1. *Underground Electrical Distribution.* As PWB acknowledged in the claim, the inclusion of the duct bank in the final design was an error of PWB's designer of record. However, the Government acknowledged that it received a benefit for this work and approved compensation under modification 04 (enclosure 14 and 15). The duct bank works ($55,340.18) were off-set with Liquidated Damages.

2. *Supply of Permanent Power (Switch Gear -3).* RFP Part 3, page 14, para 2.4, Appropriate Design, (enclosure 1) states "As the designer of record, the design-build contractor shall be responsible to provide a fully coordinated and complete design in accordance with all applicable codes, regulations, and contract requirements. The designer of record shall be responsible for professional quality, technical accuracy, and the coordination of all final designs, drawings and specifications."

As this is a Design-Build project, PWB is responsible to ensure constructability of their design. As required by contract, a part of this responsibility is the requirement that the contractor "field verify" all existing conditions (enclosure 20; RFP Part 3, G-41 Exterior Electrical Service). Any failure to do so which results in a design flaw and subsequent impact to the project would be entirely attributable to the Contractor.

The RFP did not state there was a spare position available on existing SWGR-3. PWB submitted its initial permanent power design to remove all OHPD lines based on the belief that a 6 way switch with two spare switches was available. The Government's Engineering Tech, Charles Green, has disputed that he provided the false information attributed to him. The normal process for gaining access to a switch gear is for the contractor to submit an RFI which the Government can coordinate with the end user of the system. PWB did not do this and instead relied on unconfirmed information. The first time PWB attempted to officially field verify the existing conditions was at the Red Zone meeting (enclosure 21) which occurred four (4) days after project contract completion date. The SWGR-3 site was immediately opened following PWB's request at the Red Zone meeting. PWB is responsible for the delay due to the late field verification that resulted in a flawed design. PWB proceeded at its own risk on the final design.

A series of meetings, site visits, and way forward proposals took place from 6 Mar 2014 – 12 Jun 2014. The Government wanted to assist PWB to find a way forward and provided PWB a sketch that was similar to the RFP and a response to PWB's 29 May 2014 Agenda (enclosure 22). PWB in-turn verified the sketch with their DOR and submitted RFI G063 dated 15 Jun 2014 (enclosure 23) which the Government accepted on 18 Jun 2014. The way forward was basically to follow the original RFP and existing infrastructure in lieu of utilizing a spare switch.

Based on PWB's failure to "field verify" its design, delays to the Underground Electric Distribution System and the Supply of Permanent Power to the Facilities are contractor delay.

3. *PWB Failure to Submit Electrical Plan:*
PWB failed to submit an electrical "plan" for Government approval per Concept Design Workshop meeting minutes (enclosure 16) which contributed to a "flawed" design and contractor delay to the project.

4. *Outage delays.* Per Government Scheduler TIA (enclosure 13), Outage Delay 1 occurred between 5 July 2014 and 26 July 2014 for a total of 22 days. PWB was compensated for this outage delay under modification 04 (enclosure 14). After further review from the Government's scheduler, the Government believes Outage 1 was requested in furtherance of PWB's attempt to supply temporary power to the building. The attempt to supply temporary power was an attempt to mitigate impacts from PWB's delay in supplying permanent power to the facility and was never a critical path task. Unrealized attempts to mitigate existing delay should not be considered Government delay, particularly, where the attempted mitigation does not reduce the time impact of the overarching and driving delay. Even assuming that Outage Delay 1 was attributable to the Government, said delay was concurrent to other delays attributable

to the contractor, namely, the Roofing Delay and Supply of Permanent Power delay discussed previously. As such, PWB's request for extended overhead for this period is denied.

Outage Delay 2 occurred between 24 August 2014 and 27 September 2014 for a total of 35 days per Government Scheduler (enclosure 13). The 35 day outage delay is acknowledged as Government delay. However, PWB was over compensated due to the time it would have taken to repair the slab vice replace. It would have taken PWB 7 to 14 weeks to repair the slab. Therefore, the 35 day time extension request and extended overhead for the 2nd outage request delay will be off-set with the over compensation for the slab repair.

5. *PWB-Caused Delays to the Permanent Power.* Per Government REA Response dated 17 Jul 2015 (enclosure 24) and Government TIA (enclosure 13), the Primary Power Flawed Design, XLP Cable procurement, and Miscellaneous delays led to a 334 day contractor delay:

a. Primary Power Flawed Design (Delay Period: 12 November 2013 to 11 October 2014, 334 CDs):

   PWB failed to field verify IAW RFP Part 3, G-41 (enclosure 20) its design to the Underground Electric Distribution System and the Supply of Permanent Power that led to a flawed design and 334 calendar day contractor delay.

b. XLP Cable (Delay Period: 12 November 2013 to 30 June 2014, 231 CDs):

   PWB failed to procure XLP copper cable in accordance with RFP Part 3, G-41 (enclosure 20) in a timely manner. The failure to comply with the RFP in terms of procurement of the XLP copper cable in accordance with the RFP had a big impact; 231 days delay per Government TIA (Enclosure 13) to the underground electrical issue.

c. Miscellaneous "Contractor" Delays:

   Reference Contracting Officer letters of concern dated 18 February and 27 February 2014 (enclosure 25) stating PWB used outdated version specs for various work (pad mounted transformers, pad mounted switchgear, telecommunications cabling systems, interior fire alarm and mass notifications, fluid applied roofing) in the final design (enclosure 10). The correct specifications were not submitted/corrected until 10 Apr 2014 (per PWB REA dated 31 Jan 2015/revised 16 Feb 2015; enclosure 26). Materials were not ordered timely due to incorrect specifications in the final design, and therefore considered contractor delay.

Time Impact Analysis

PWB contends:
The delay to the underground electric distribution system and supply of permanent power spans 342 calendar days. PWB is requesting the following:

- Time Impact: Contract Extension: 342 days
- Cost Impact: Compensable Days 342 @ $2,721.17=$930,640.14
- Previously Approved By the Government: Additional work $55,340.18

Government Position:
The delays sustained to the design and construction of the underground electrical distribution system and the supply of permanent power to the facility are concurrent to the roof insulation contractor delay per Government TIA (enclosure 13).

Based on the above, the delays to underground electrical distribution system and supply of permanent power attributable to the Government have been previously approved under mod 04 (duct bank work).

The 35 day time extension for the 2nd outage delay was off-set from the over compensation from the slab delay as discussed under section II. A, Delays Sustained to the Construction of the Slab on Grade. Note that the remaining delay claims under this portion of the claim are either contractor delays or concurrent delays, therefore, PWB's request for a 342 day time extension and $930,640.14 for extended overhead cost are hereby denied.

V. Over-Zealous Enforcement:

PWB Contends:
PWB contends throughout the course of this project that PWB was subjected to over-zealous and punitive enforcement of contract requirements by the Government which significantly disrupted PWB's efforts to prosecute the contract work and overcome multiple project delays.

Cost and Time Impact:
- No liquidated damages assessed
- Withheld Contract Funds $925,415.20

Government Position:
The Government issued 10 letters of concern dated 5 Jun 2013 Ser: RA130092, 2 Aug 2013 Ser: RA130115, 21 Aug 2013 Ser: RA130117, 21 Jan 2014 Ser: RA140001, 18 Feb 2014 Ser: OPN-VC/140018, 18 Feb 2014 Ser: OPN-VC/140020, 27 Feb 2014 Ser: RA-VC/140026 , 21 Apr 2014 Ser: RA140048, 8 Sep 2014 Ser: RA1401116 and 17 Nov 2014 Ser: RA140151 (enclosure 27) for multiple reasons, the most significant of which concerned PWB's progress as compared to the approved schedule. The Government has a contractual right IAW the Defaults clause FAR 52.249-10 (enclosure 28), and the Schedules for Construction Contracts FAR 52.236-15 clause (enclosure 29) to be concerned with the timely completion of the project. While PWB often referred to a forthcoming REA to justify its schedule, with one exception, none was provided at the time the letters of concerns went out (enclosure 30). The issuance of letters of concern is not overzealous or excessive but reflects the Government's lack of information from the contractor concerning PWB's multiple manpower issues, quality issues, management issues, subcontractor issues, safety issues, and any delays pertaining to PWB's addressing of these issues is contractor responsibility.

The Government issued 17 noncompliance notices (enclosures 31). The Government has a contractual right to issue the noncompliance notices if the contractor is not complying with the requirements of the contract and IAW the Material and Workmanship FAR clause 52.236-5 and Inspection of Construction clause 52.246-12 (enclosure 32). Issuing noncompliance notices is not overzealous or excessive rather, provides an administrative record of the Government's legitimate concerns.

Various noncompliance notices were issued for safety. On one occasion there was a major safety incident where PWB's electrical supervisor was electrocuted on the job and never returned to work (enclosure 33). The Government has a contractual right IAW the Accident Prevention clause, FAR 52.236-13, to safeguard the public and Government personnel and property. Issuing noncompliance notices for safety is not overzealous or excessive rather, provides an administrative record of the Government's legitimate concerns.

Based on the approved schedule and at the time of when the numerous letters of concern were issued by the Contracting Officer, in accordance with FAR clause 52.23-15 Schedules for Construction Contracts (enclosure 29), if the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer without additional cost to the Government.

Based on the above and absent PWB's ability to quantify and prove entitlement for over-zealous enforcement, this portion of the claim is denied.

VI. Cumulative Impact of Multiple Project Disruptions:

PWB Contends:

- Time Impact: Contract Extension: 346 days

- Cost Impact: Compensable Days *346 days @ $2,721.17
  *To the extent the 349 Compensable Days @ $2,721.17 are not awarded elsewhere, those are sought herein.

Government's Position:
Based on the above, PWB was previously compensated for a total of 288 day time extension. The remaining 58 days are contractor delay.

VII. COST DATA SUMMARY

CLAIMS REQUESTS	PWB CONTENDS	GOVERNMENT POSITION
Contract Extension • 346 Days – 188 Days Previously Approved by the Government	158 days	**Denied.** The Government previously approved 188 days issued by Contracting Officer letter dated 27Mar2015/Mod04 dated 13Apr2014 (enclosures 14 and 15). Additional cost of $586,703.85 was off-set with liquidated damages (LD's) for an additional 100 days ($5,850 LD's rate divide by $586,703.85=100 days) making the total time extension to 288 days with 58 days or $339,300 remaining in LD's.
Withheld Contract Funds • Gov't Not Yet Disbursed $345,150.00 • Gov't Previously Charged as Liquidated Damages $580,265.70	$925,415.70	**Denied.** Additional cost of $586,703.85 was off-set with LD's for an additional 100 days ($5,850 LD's rate divide by $586,703.85=100 days) making the total time extension to 288 days with 58 days/$339,300 remaining in liquidated damages. Note: The Government will release $5,850.00; difference of LD's to be assessed/$339,300 and remaining balance in the contract/$345,150.00. PWB may invoice for $5,850.00.
Additional Work	$246,943.03	**Denied.** This is for the additional Roof work. This cost was denied due to contractor delay on the roofing issue.

Extended Overhead of 289 Days • 346 Days – 57 Days Previously Approved by the Government • 289 Compensable Days @ $2,721.17	$786,418.13	**Denied.** Denied with the exception of the extended overhead for the base pass delays (previously approved under mod 04). The Government approved the extended overhead cost for the 35 day 2nd outage delay; however, this will be off-set with the over compensation for the slab repair. The remaining delays were either contractor delays or concurrent delays (no entitlement for extended overhead if concurrent delay). Further, the Government has concerns on the extended overhead rates. There are concerns regarding direct labor calculation utilizing labor hours not number of days, company vehicles and living expenses that require an employee-employer agreement, cell phone expense as a personal use, wireless internet as a double charge, full-time charging of half-time costs, removal of field overhead costs that uses a daily rate but should be calculated as a percentage rate and possible double charging of 4% home office overhead.
No Liquidated Damages Assessed	None	**Denied.** Additional cost of $586,703.85 was off-set with LD's for an additional 100 days ($5,850 LD's rate divide by $586,703.85=100 days) making the total time extension to 288 days with 58 days or $339,300 remaining in liquidated damages.
Unabsorbed Home Office Overhead (See Eichleay Formula Chart)	$133,564.97	**Denied.** Denied due to various contractor delays and concurrent delay. In addition, PWB has not substantiated and provided backup documents to support their Eichleay chart.
Total Interest through 12/31/15 (See Interest Chart)	$66,534.51	**Denied.** IAW FAR Clause 52.232-5, Payments under Fixed Price Construction Contracts (enclosure 34), if satisfactory

		progress has "not" been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. Due to the various LOC's stating the project was behind schedule and requesting supporting documentation IAW the defaults clause (enclosure 30) to substantiate a time extension, numerous noncompliance notices issued, and the late submission of the REA justifying a time extension, the retainage of 10% was within the right of the Government, therefore, total interest though 31 Dec 2015 is denied.
Costs to Prepare REA, Amended REA, and Formal Claim • Legal Fees – Kirby Noonan Lance & Hoge $32,752.50 • Schedule Analysis and TIA Preparation – Joanie Taylor $1,292.00 • Schedule Analysis and TIA Preparation – Kugan Panchadsaram $8,850.00 • Principal 1,000 hrs @ $62.75 = $62,750.00	$105,644.50	**Denied.** Costs incurred for prosecution of claim are not compensable. REA cost is compensable. PWB needs to resubmit for REA cost only with supporting documentation.
Total Request for Formal Claim	158 day time extension Plus $2,264,520.84	**Denied.** Based on the above and Government TIA (enclosure 13), there were various contractor delays and concurrent delays. The Government fully compensated PWB for all Government delays with the 288 day time extension (mod 04/enclosure 14). The Government previously approved 188 days issued by Contracting Officer letter dated 27Mar2015/Mod04 dated 13Apr2014 (enclosures 14 and 15). Additional cost of $586,703.85 was off-set with LD's for an additional 100 days ($5,850 LD's rate divide by

		$586,703.85=100 days) making the total time extension to 288 days with 58 days/$339,300 remaining in liquidated damages to be assessed.

There are still punchlist remaining (enclosure 35) that PWB has not completed since beneficial occupancy date of 26 Nov 2014. PWB is required to complete these punchlist items as soon as possible.

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's—

(1) Small claim procedure for claims of $50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less; or

(2) Accelerated procedure for claims of $100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision.

Sincerely,

VINCENT CARBULLIDO
Contracting Officer

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

Please read instructions on back before completing form.

REPORT CONTROL SYMBOL: DD-DA&M(A)1365

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*	3. DATE COMPLETED *(YYYYMMDD)*	4. ACTION OFFICE
16-011	X a. INITIAL ☐ b. APPEAL	20160610	O9C

5. CLERICAL HOURS *(E-9/GS-8 and below)*	FEE CODE	(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
a. SEARCH	1		X	$20.00	=	0.00
b. REVIEW/EXCISING	2					0.00
c. OTHER ADMINISTRATIVE COSTS	3					0.00
6. PROFESSIONAL HOURS *(O-1 - O-6/GS-9-GS-15)*/CONTRACTOR		(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
a. SEARCH	1	0.25	X	$44.00	=	11.00
b. REVIEW/EXCISING	2	0.25				11.00
c. OTHER/COORDINATION/DENIAL	3					0.00
7. EXECUTIVE HOURS *(O-7 - ES 1 and above)*		(1) TOTAL HOURS		(2) HOURLY RATE		(3) COST
a. SEARCH	1		X	$75.00	=	0.00
b. REVIEW/EXCISING	2					0.00
c. OTHER/COORDINATION/DENIAL	3					0.00
8. COMPUTER SEARCH		(1) TOTAL TIME		(2) RATE		(3) COST
a. MACHINE TIME *(Not PC, desktop, laptop)*	4		X		=	0.00
b. PROGRAMMER/OPERATOR TIME *(Human)*						
(1) Clerical Hours	1			$20.00/hr		0.00
(2) Professional Hours	1			$44.00/hr		0.00
9. OFFICE MACHINE COPY REPRODUCTION		(1) NUMBER		(2) RATE		(3) COST
a. PAGES REPRODUCED FOR FILE COPY	3	15	X	.15	=	2.25
b. PAGES RELEASED	5			.15		0.00
10. PRE-PRINTED PUBLICATIONS		(1) TOTAL PAGES		(2) RATE		(3) COST
a. PAGES PRINTED	5		X	.02	=	0.00
11. COMPUTER PRODUCT OUTPUT/ACTUAL COST CHARGES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. TAPE/DISC/CD	6		X		=	0.00
b. PAPER PRINTOUT	3					0.00
12. OTHER ADMINISTRATIVE FEES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. ALL POSTAGE/ADMINISTRATIVE *(See instructions)*	3		X		=	0.00
13. AUDIOVISUAL MATERIALS		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. MATERIALS REPRODUCED	4		X		=	0.00
14. SPECIAL SERVICES		(1) NUMBER		(2) ACTUAL COST		(3) COST
a. ALL SPECIAL SERVICES *(See instructions)*	6		X		=	0.00
15. MICROFICHE REPRODUCED	5		X	.25	=	0.00

FEE CODES

1 Chargeable to "commercial" requesters. Chargeable to "other" requesters after deducting 2 hours.
2 Chargeable to "commercial" requesters only.
3 Not chargeable to any fee category.
4 Chargeable to "commercial". Chargeable to "other" after deduction of the equivalent of 2 hours. (Example: deduct $88.00 professional rate.)
5 Chargeable to all fee categories after deduction of 100 pages (DOES NOT include "commercial").
6 Chargeable to all fee categories. No deductions.

16. FOR FOI OFFICE USE ONLY

a. TOTAL COLLECTABLE FEES	$24.25			
b. TOTAL PROCESSING FEES	$24.25			
c. TOTAL CHARGED	$24.25			
d. FEES WAIVED/REDUCED *(X one)*	☐	Yes	X	No
e. FEES NOT APPLICABLE *(X one)*	☐	Yes	X	No

See Chapter 6, Fee Schedule, DoD 5400.7-R, to determine appropriate assessment of fees.

Request Details

Status : *Estimate Costs* **Due Date :** *07/07/2016*

1

Submitted Evaluation Assignment Processing Closed

Tracking Number :	DON-NAVY-2016-007019	Submitted Date :	06/07/2016
Requester :	Mr. John Camacho	Perfected Date :	06/08/2016
Organization :	N/A	Last Assigned Date :	06/07/2016
Requester Has Account :	Yes	Fee Limit :	$100.00

Submission Details Case File Admin Cost Assigned Tasks Comments (0) Review

Request Handling

Requester Info Available to the Public :	Yes	Request Perfected :	Yes
		Perfected Date :	06/08/2016
Request Track :	Simple	Appellate Authority :	Select Autho
Fee Category :	Commercial	Acknowledgement Sent Date:	
Fee Waiver Requested:	No	Unusual Circumstances ? :	No
Fee Waiver Status:	N/A	5 Day Notifications:	☐
Expedited Processing Requested :	Yes	Litigation :	No
Expedited Processing Status :	Pending Decision		

Request Description

Short Description :

Redhorse Cantonment - KO Final Decision Letter

The letter from the Contracting Officer Vincent Carbullido to Pacific West Builders answering PWB's formal claim submitted around June 3, 2016. This is in relations to the Redhorse Cantonment Facility Project .

Description Available to the Public : Yes

Has Description Been Modified? ☐

Additional Information

Case # :	16-011
Name of Local Command :	NAVFAC MARIANAS
Contract/Sol.# :	N40192-10-d-2810-0003
Limit Request To Clearly Releasable Info :	Select Limit Request To Clearly Releasable Info

Attached Supporting Files

No supporting files have been added.

Upload Supporting Files

If you are having problems, or do not see the "Select Files" button, *switch to the basic uploader.*

No attachments have been added.