



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: February 8, 2007

CBCA 627

FOSTER WHEELER DEVELOPMENT CORPORATION,

Appellant,

v.

DEPARTMENT OF ENERGY,

Respondent.

Andrew D. Ness of Thelen Reid Brown Raysman & Steiner, Washington, DC, counsel for Appellant.

Natalie Appetta, National Energy Technology Laboratory, Department of Energy, Morgantown, WV; and Nancy Toppetta, National Energy Technology Laboratory, Department of Energy, Pittsburgh, PA, counsel for Respondent.

DRUMMOND, Board Judge.

ORDER

This appeal arises out of contract number DE-AC21-86MC21023, between respondent, the Department of Energy, and appellant, Foster Wheeler Development Corporation. The contract involved the research and development of a Pressurized Fluidized-Bed Combustion Second Generation System. On January 26, 2007, appellant filed this appeal. Appellant's letter enclosed as an attachment a letter from a contracting officer dated October 31, 2006. The contracting officer's letter did not include a notice of appeal rights and did not identify the letter as a final decision of the contracting officer.

During a conference convened on February 5, 2007, by the Board with the parties, appellant informed the Board that it had not submitted a claim, certification, or request which could serve as the basis for a decision -- actual or deemed -- of the contracting officer. Appellant believes the appeal and final decision are premature, and the Board is not yet vested with jurisdiction, or at the very least jurisdiction is so doubtful that it would be inappropriate to continue the case before us. Respondent agrees. Both parties also agreed that the appeal should be dismissed without prejudice to appellant's right to submit to the contracting officer a claim and certification.

Accordingly, this Board does not reach the merits of the appeal and the appeal is **DISMISSED FOR LACK OF JURISDICTION.**

JEROME M DRUMMOND
Board Judge