



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: February 3, 2011

CBCA 2233

HILLCREST AIRCRAFT COMPANY,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Leslie H. Wiesenfelder of Dow Lohnes PLLC, Washington, DC, counsel for Appellant.

Heather M. Self, Office of the General Counsel, Department of Agriculture, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **GOODMAN**, and **DRUMMOND**.

BORWICK, Board Judge.

This is an appeal from a contracting officer's decision on an uncertified claim in excess of \$100,000. The contracting officer's decision on an uncertified claim is a nullity and may not serve as a basis for Board jurisdiction. *Newport News Shipbuilding and Dry Dock Co. v. Garrett*, 6 F.3d 1547, 1552-53 (Fed. Cir. 1993); *Whiteriver Construction, Inc. v. Department of the Interior*, CBCA 2045, 10-2 BCA ¶ 34,582, at 170,487; 41 U.S.C. § 7103(b)(1), (f)(2) as codified by Pub. L. No. 111-350, 124 Stat. 3677, 3816 (2011) .

On January 31, 2010, the parties submitted a purported *Hamilton* stipulation to cure jurisdictional defects. *See United States v. Hamilton Enterprises*, 711 F.2d 1038 (Fed. Cir. 1983); *Lockheed Martin Tactical Defense Systems v. Department of Commerce*,

GSBCA 14450-COM, 98-1 BCA ¶ 29,717. A *Hamilton* stipulation requires the appellant to first submit to the contracting officer a certified claim comprising the “exact facts and legal arguments” as those of the previously submitted uncertified claim, i.e. a certified claim that is factually and legally identical to the uncertified claim, and then to enter into the appropriate stipulation with respondent. *Lockheed Martin Tactical Defense Systems*, 98-1 BCA at 147,358; *Carothers & Carothers Co.*, Eng. BCA 4739, 88-3 BCA ¶ 21,161, at 106,815.

In this case, the certified claim that was submitted to the contracting officer was not based on the “exact facts” in the uncertified claim that was previously submitted. Instead, the certified claim contained two additional “post-decision” invoices that served as a basis for increased quantum. Consequently the certified claim is a new claim, not a claim that is factually identical to the uncertified claim. The parties state that the new claim is based on the same set of operative facts and does not change the substance of the claim. However, the requirement that the newly certified claim comprise the “exact facts” as the uncertified claim forecloses a certified claim that is “similar to” or “substantively the same as” the uncertified claim from meeting the requirements of a *Hamilton* stipulation.

Decision

This appeal is **DISMISSED** for lack of jurisdiction.¹

ANTHONY S. BORWICK
Board Judge

We concur:

ALLAN H. GOODMAN

JEROME M. DRUMMOND

¹ The contracting officer must now issue a decision on the certified new claim, 41 U.S.C. § 7103(d), with the contractor filing any subsequent appeal from that decision at this Board or at the United States Court of Federal Claims.

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Board Judge

Board Judge