



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: March 4, 2015

CBCA 4459

CONSTRUCTION GROUP LLC,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Bobby Knight, Owner of Construction Group LLC, North Charleston, SC, appearing for Appellant.

Cassandra Walbert, Legal Service Command, Procurement Law Division East, United States Coast Guard, Department of Homeland Security, Norfolk, VA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **KULLBERG**.

DANIELS, Board Judge.

We dismiss this appeal for lack of jurisdiction because no underlying claim or contracting officer decision exists.

Background

On December 28, 2010, the United States Coast Guard awarded to Construction Group LLC a contract to restore Pier Papa Substation P3 and perform other miscellaneous electrical repairs at the Coast Guard's Naval Engineering Support Unit (NESU) Charleston

in North Charleston, South Carolina. The contract was originally in the amount of \$426,757.65.

According to the Coast Guard, “Construction Group, LLC successfully completed the work and the project was accepted on September 7, 2012. The Coast Guard is satisfied with the work that was performed. Construction Group, LLC is fully entitled to the remaining obligated contract balance in the sum of \$6,028.55.”

On April 10, 2013, Construction Group wrote to the contracting officer, “advising [her] of [its] intent to submit a claim arising under and relating to the . . . contract.” On June 6, 2013, the appellant again told the contracting officer that “it is our intent to submit a claim.” On March 14, 2014, the appellant wrote that it was making a “Part 1 Claim for us to modify, reform, and renegotiate the contract” and that a part 2 claim was pending. No claim was made in or attached to the letter, however.

Construction Group appears to allege, in its complaint, that on or about September 14, 2012, it asked the Coast Guard to pay for rework that Construction Group performed after its subcontractor, Atlantic Electric, performed the work unsatisfactorily and the agency accepted it. Construction Group says that in February 2011, the subcontractor had stolen copper from Pier Papa and the Coast Guard had prevented its security contractor from making an arrest. Construction Group has not demonstrated that it has made a written claim to the contracting officer regarding any matter involving the subcontractor, however. Complaint ¶ 11.

Construction Group asserts, in its complaint, that it has suffered “monetary damages, losses and injuries cumulatively about the contract” in an amount of between \$40,000 and \$120,000. Construction Group says additionally that it wishes the Board to order that the appellant be granted relief “to correct for revisions, equitable modifications and/or ratifications [that] have a potential increase in the contract extra costs and losses to the appellant.” Complaint ¶ 13. The appellant says that due to “the intentional, malicious, and wrongful acts so heinously perpetrated upon the appellant between NESU Director and my subcontractor, Atlantic Electric,” the appellant has lost the opportunity to bid on other jobs. *Id.* ¶ 14.

On January 6, 2015, a Coast Guard contracting officer wrote to Construction Group as follows:

As stated in previous letters of 28 March 2013 and 3 April 2013, there is no dispute of claim between your firm and the Coast Guard. All items under the terms and conditions of the [contract] have been received and accepted.

This contract is hereby considered complete. As a result, the Contracting Officer is proceeding with a unilateral closeout of [the contract]. The final amount on this contract is \$461,179.20. The most recent payment was made on 17 November 2011, leaving a remaining balance of \$6,028.55.

Attached for your review is the contract modification with the supporting closeout documentation. If a response is not received within 14 calendar days from the date of this letter, the Contracting Officer will proceed with unilaterally signing the modification. . . .

It should be noted that Contractor's rights are protected under the Contract Disputes Act[] . . . which establishes procedures for filing claims against U.S. Federal Government contracts.

On February 18, 2015, Construction Group filed an appeal from this letter, which it characterizes as a final decision which makes "a money claim . . . against the contractor for \$6,028." *See* Objection to the Respondent's Motion to Dismiss at 1. In its notice of appeal, Construction Group says that "[t]his Appeal is that the Prime had/has correctly requested that the Contract Officer(s) including the C.C.O. [sic] Cathy Broussard to meet with the appellant and negotiate the contract breaches; and to further & otherwise reform and modify this Contract accordingly."

Discussion

The Department of Homeland Security (of which the Coast Guard is a part) has moved the Board to dismiss this appeal for lack of jurisdiction because neither Construction Group nor the agency has made a claim from which an appeal of a contracting officer decision is possible. Construction Group opposes the motion, apparently arguing contradictorily that its appeal is (a) from the contracting officer's letter of January 6, 2015, which makes a government claim, and (b) from a deemed denial of a claim it made to the contracting officer.

The Contract Disputes Act (CDA) establishes a structure for the making and resolving of claims under executive agency contracts for the procurement of property, other than real property; services; construction, alteration, repair, or maintenance of real property; and the disposal of personal property. 41 U.S.C. § 7102(a) (2012). A "claim" is "a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or related to the contract." *Northrop Grumman Computing Systems, Inc. v. United States*, 709 F.3d 1107, 1112 (Fed. Cir. 2013); *Parsons Global*

Services, Inc. v. McHugh, 677 F.3d 1166, 1170 (Fed. Cir. 2012); *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc) (all referencing the definition prescribed in the Federal Acquisition Regulation).

The CDA requires that a claim, whether by a contractor or the Government, be in writing. 41 U.S.C. § 7103(a)(1), (2). The Government's contracting officer must issue a decision in writing on a contractor's claim. *Id.* § 7103(d). Once a decision has been issued – or, in the case of a contractor's claim, once sufficient time has passed that the claim may be deemed denied – the contractor may timely appeal the decision to the appropriate board of contract appeals or bring an action in the United States Court of Federal Claims. *Id.* §§ 7103(f)(5), 7104. The Court of Appeals for the Federal Circuit has held that a decision of a contracting officer on a valid claim is a prerequisite to jurisdiction over a CDA claim by a board or the Court of Federal Claims. *Northrop Grumman*, 709 F.3d at 1111-12; *Parsons Global Services*, 677 F.3d at 1170; *Sharman Co. v. United States*, 2 F.3d 1564, 1568 (Fed. Cir. 1993).

Here, it is clear that neither the contractor nor the Government has made a claim. We understand that Construction Group is upset with the Coast Guard's determination that all work done under the contract was satisfactory and the agency's decision not to pursue action against the subcontractor, Atlantic Electric. The contractor has on several occasions manifested an intent to make a claim or claims under the contract, but the record contains no evidence that any such claim was ever made. To the extent that Construction Group asserts that it has been damaged by a Coast Guard action, it has alleged that the damage is in a wide range of dollars, not the "sum certain" necessary to constitute a CDA claim. Construction Group misconstrues the Coast Guard's January 6, 2015, letter. That letter expressly does not make a claim against the contractor; it merely seeks the contractor's acquiescence to being paid \$6028.55 and having the contract closed out. The letter specifically informs the contractor that by agreeing to this course of action, it is not waiving its rights to make a CDA claim or claims.

Construction Group says that because the Board wrote in another case, "The contractor need not submit a monetary claim to have the dispute over interpretation resolved," we may take jurisdiction over this case. The appellant does not appreciate that in the other case, *Partnership for Response & Recovery, LLP v. Department of Homeland Security*, CBCA 3566, 14-1 BCA ¶ 35,629, the Board had jurisdiction because the appeal challenged a government claim of contract interpretation; whether the contractor had made a monetary claim was not important there. Neither party has made a claim regarding contract interpretation in the appeal now before us.

Because neither party to the contract has made a CDA claim, as that term is understood through court and board decisions, and consequently no contracting officer decision (actual or deemed denial) has ever been made with regard to a claim, the Board does not have jurisdiction over Construction Group's appeal.

The Government alternatively asks us to dismiss the case for failure to state a claim upon which relief may be granted. Because we have already agreed to the Government's principal reason for dismissal, we need not address the alternative ground.

Decision

The agency's motion to dismiss is granted. This case is **DISMISSED FOR LACK OF JURISDICTION**.

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

H. CHUCK KULLBERG
Board Judge