



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: November 21, 2023

CBCA 7920

OPTUM PUBLIC SECTOR SOLUTIONS, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

J. Chris Haile and William B. O'Reilly of Crowell & Moring LLP, Washington, DC, counsel for Appellant.

Jean M. Athey, Office of General Counsel, Department of Veterans Affairs, Hines, IL; and Adrienne Zelnick Schwartz and Laura Reass, Office of General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **RUSSELL**, **ZISCHKAU**, and **SULLIVAN**.

SULLIVAN, Board Judge.

Optum Public Sector Solutions, Inc. (Optum) appealed a letter issued by the contracting officer for the Department of Veterans Affairs (VA). Because the letter issued by the contracting officer was not a final decision asserting a claim for repayment, we dismiss the appeal for lack of jurisdiction.

Background

On July 28, 2023, the VA contracting officer sent Optum a letter addressing Optum's request for reassessment of a guidance letter regarding payment guidelines on the contract that had been issued earlier in the year. VA requested that Optum reimburse VA for any improper payments and stated that, if the error was not corrected, VA would issue a formal demand for payment in accordance with 48 CFR 32.604. *See* 48 CFR 32.604 (2022) (FAR 32.604). The contracting officer did not quantify the amount owed, state that the letter was a final decision, or provide Optum with notice of its appeal rights.

The Board docketed Optum's appeal of this letter on October 26, 2023. On November 3, 2023, at Optum's request, the Board issued an order directing VA to clarify whether the July 28 letter was a final decision of the contracting officer. In response to that order, the parties filed a joint motion to dismiss the appeal for lack of jurisdiction.

Discussion

The Board derives its jurisdiction to decide contract disputes from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). The CDA requires both a claim and a contracting officer's decision on the claim prior to an appeal to the Board. 41 U.S.C. §§ 7103–7104. A claim is defined as “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.” FAR 2.101. The contracting officer's decision is the “linchpin” in this structure and “[n]o appeal . . . to the agency board of contract appeals . . . may be taken” without the decision. *Paragon Energy Corp. v. United States*, 645 F.2d 966, 967 (Ct. Cl. 1981). The “rule applies whether the claim at issue is a contractor claim or a Government claim.” *4K Global-ACC Joint Venture, LLC v. Department of Labor*, CBCA 7392, 22-1 BCA ¶ 38,163, at 185,331.

The contracting officer did not state that the decision was a final decision or provide the notice of appeal rights. While the absence of these items is not fatal to the issuance of a contracting officer's final decision, *Placeway Construction Corp. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990), the failure to quantify the amount owed and thereby state a sum certain indicates a lack of intent to issue a government claim. *Crystal Clear Maintenance v. General Services Administration*, CBCA 7547, 23-1 BCA ¶ 38,324, at 186,109 (citing *Piedmont-Independence Square, LLC v. General Services Administration*, CBCA 5605, 18-1 BCA ¶ 37,107, at 180,614). The contracting officer's invocation of the demand process outlined in FAR 32.604 indicates that this letter was a step in the assertion of a formal demand for repayment but not a final decision. That process requires the contracting officer to first notify the contractor of the amount owed and allow the contractor an opportunity to respond. FAR 32.604. If the dispute continues after this opportunity to respond, the contracting officer then issues a final decision. FAR 32.605; *see 4K Global-*

ACC Joint Venture, 22-1 BCA at 185,333 (“the ‘demand letter gives the contractor notice of the potential claim and an opportunity to respond. If warranted, the [contracting officer’s] appealable claim decision [then] follows.’” (quoting *Bean Horizon-Weeks Marine (JV)*, ENG BCA 6398, 99-1 BCA ¶ 30,134, at 149,060 (1998))).

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

We concur:

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge