



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: May 3, 2012

CBCA 2735

CPR RESTORATION, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Gregory J. Allard of J. Scott Watson, P.C., Glen Mills, PA, counsel for Appellant.

Jennifer Hedge, Office of Regional Counsel, Department of Veterans Affairs, Pittsburgh, PA, counsel for Respondent.

Before Board Judges **BORWICK**, **VERGILIO**, and **KULLBERG**.

VERGILIO, Board Judge.

On February 9, 2012, the Board received a notice of appeal from CPR Restoration, LLC (appellant) involving the respondent, the Department of Veterans Affairs (agency). Appellant seeks payment of \$279,363 for emergency restoration services it claims to have performed for the agency at an agency hospital in Philadelphia. A contracting officer (references to a contracting officer are to the agency contracting officer of the contract between the contractor and agency) denied the request for payment, concluding that appellant performed the work as a subcontractor to a contractor to the agency, such that the contractor, not the agency, is responsible for paying appellant. Further, the contracting officer determined that an agency employee who signed the documents purporting to be contracts between appellant and the agency lacked contracting authority; no one with contracting authority ratified the alleged agreements. The record has closed on the initial issue of the status of appellant as a contractor or not and its ability to pursue this case at the Board.

The Board concludes that appellant lacks a contract with the agency. The agency employees who signed the purported contracts were without contracting authority; the purported contracts have not been ratified by an agency employee with contracting authority. It appears that appellant performed the services for which it seeks compensation as a subcontractor to a contractor to the agency. As a subcontractor, appellant may not file an appeal directly with this Board; a contractor (not a subcontractor) is the proper party to file an appeal after a proper contractor claim has been denied (in fact or as a deemed denial) by a contracting officer. Because appellant has failed to base its appeal upon a proper claim for which the Board can grant relief, the appeal is dismissed.

Findings of Fact

1. On March 17, 2010, a fire occurred in the work area of a construction contractor to the agency in a hospital in Philadelphia. Water and other damage occurred in the building. That contractor utilized appellant to perform restoration and cleaning services at the facility. The contractor coordinated the repair and restoration efforts with appellant and the agency, among others including an insurance company to the contractor. Exhibits 1 at 1-2; 3 at 6; 11 at 26, 18 at 176 (all exhibits are in the appeal file).

2. Appellant has presented three documents (forms on its own letterhead) which it purports to be written contracts between appellant and the agency to perform work. Two of these purported authorizations are dated March 17, 2010; one is dated June 28, 2010. The documents state that appellant is to proceed with recommended procedures to preserve, protect, and secure from further damage the property; the documents purport to make the agency responsible for any and all charges and/or costs not paid to appellant by an insurance company. Each document bears the signature of an employee of appellant and a then-employee of the agency. Exhibit 13 at 160-62.

3. The factual record indicates that the then-employees of the agency lacked authority to enter into contracts on behalf of the agency. Exhibit 14 at 163. The record does not demonstrate that anyone with contracting authority ratified any of the purported agreements or entered into a contract with appellant to perform the work underlying this dispute.

4. By letter dated July 7, 2010, appellant sought payment of \$270,465.77 from the agency. Exhibit 2 at 4-5. The contracting officer informed appellant that the agency did not hire appellant and could not pay appellant as a subcontractor. The contracting officer informed the contractor, by letter dated July 16, 2010, of subcontractor requests for payment being made to the agency. Exhibit 3 at 6.

5. By letter dated April 14, 2011, to the contracting officer, appellant sought payment of \$279,363. This amount is comprised of \$270,465.77, for work invoiced in March 2010; \$4595, for work invoiced in April 2010; and \$4302.23, for work invoiced in July 2010. Exhibit 13.

6. By letter dated June 2, 2011, the contracting officer denied appellant's request for payment. The determination notes the bases for denial. First, the agency did not contract with appellant; rather, appellant contracted with a contractor to the agency. Second, individuals who may have signed appellant's form authorizing the work lacked authority to bind the Government (each employee was not a contracting officer, lacked a warrant, and was not in the purchasing department). Exhibit 14 at 163. The record contains no indication that appellant received this determination prior to February 2012. Exhibit 15 at 165.

7. By letter dated January 12, 2012, appellant (through counsel) sought a decision on the request for payment of \$279,363. Exhibit 15 at 165. In February 2012, appellant (through counsel) received the decision (dated June 2, 2011, Finding 6) denying the request for payment. Exhibits 16 at 166-67; 18 at 176.

8. On February 9, 2012, appellant filed a notice of appeal, seeking \$279,363.

Discussion

Appellant has not demonstrated that it is a contractor with the agency, through an actual or an implied contract. Appellant relies upon documents signed by its employees and agency employees. The record does not demonstrate that an individual with contracting authority signed the agreements of behalf of the agency. Such an agreement, signed by one without contracting authority, does not bind the agency. *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380 (1947). The record also does not establish that an agency employee with contracting authority ratified the agreement; rather, the agency understood that appellant performed as a subcontractor to a contractor to the agency. Under the circumstances, an actual or an implied contract with the agency did not arise.

In this instance, appellant lacks a contract with the agency for the work performed. Accordingly, appellant was not a contractor. Not being a contractor, appellant could not submit a claim directly to the contracting officer, nor could the contracting officer issue a decision (decisions relate to claims by a contractor or the Federal Government). 41 U.S.C.A. §§ 7101 (contractor definition), 7103(a), (b) (2011). Because appellant was not a contractor and lacked an actual or deemed denial of a claim by a contracting officer, statute does not authorize appellant to file an appeal at this Board. 41 U.S.C.A. §§ 7104(a), 7105(e)(1)(B). These conclusions moot addressing the apparent lack of a certified claim.

Lacking an actual or implied contract with the agency, this appellant may not avail itself of this Board's authority to resolve contractual disputes. Appellant has failed to prove the necessary elements of a cause for which relief could be granted. *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1353 (Fed. Cir. 2011).

Decision

The Board **DISMISSES** this appeal.

JOSEPH A. VERGILIO
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

H. CHUCK KULLBERG
Board Judge