



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: July 23, 2013

CBCA 3426

EHR DOCTORS, INC.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Richard Braman, Vice President of EHR Doctors, Inc., Pompano Beach, FL, appearing for Appellant.

Lucinda E. Davis and Dorothy M. Guy, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

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

**BORWICK**, Board Judge.

The Social Security Administration (SSA or respondent) has submitted a motion to dismiss this appeal for lack of jurisdiction because appellant failed to submit a certified claim to the contracting officer as required by the Contract Disputes Act (CDA). Appellant has moved the Board to accept correction of an alleged defective certification or alternatively to suspend proceedings. We deny appellant's motion, and because we lack jurisdiction over this appeal, we grant respondent's motion to dismiss.

### Background

Appellant and respondent entered into a contract on September 18, 2009, for the authorized release of medical information through integration with the Nationwide Health Information Network (NHIN). On March 11, 2013, respondent's Office of Acquisitions & Grants (OA&G), through Ms. Jackie Foster, notified appellant via email that the contract was in the process of being closed out. Ms. Foster is an auditor with the OA&G, not the contracting officer. The email message requested appellant to "complete the attached Certification as to any outstanding claims against the contract." The hard copy of the close-out document, also signed by Ms. Foster, did not use the term "certification," but requested appellant to "inform [respondent] of any outstanding invoices or claims against this contract within [seven] days. After we receive your reply, we will proceed with contract closeout."

The close-out document had two options for appellant to check: (1) a box followed by the statement: "There are no outstanding claims," and (2) a box followed by the statement: "The following claims/invoices are outstanding." Appellant sent the document back to Ms. Foster with the second box checked and with the accompanying statement:

The original contract awarded was in the amount of \$1,000,000. SSA forcibly made a \$250,000 modification to the contract with no justification and under threat of termination. [Appellant] accepted [the] modification under duress. Contractor seeks to recover \$250,000 from SSA.

This form was not accompanied by a contractor statement that one would recognize as a certification or attempted certification required by the CDA.

On June 20, 2013, having heard nothing from respondent, appellant sent an email message to Ms. Foster, stating that it would "wait to file" if it received a response to its "settlement offer" of \$250,000 by the close of business the next day, and referenced the purported claim appellant had earlier sent to Ms. Foster. Appellant stated that it reserved the right to "add additional claims to this claim if we cannot reach a settlement when we file with the CBCA [Civilian Board of Contract Appeals] or the Court of Federal Claims."

The contracting officer, Ms. Syreeta Gay, replied on the same day that respondent would not enter into settlement negotiations with appellant. She noted that appellant and respondent had entered into a bi-lateral modification, that the contract between the parties was concluded, and that all payments due under the contract had been made. She did not style her reply as a contracting officer's decision on a contractor-submitted claim. On June 25, appellant submitted a notice of appeal to the Board.

On June 27, 2013, the Board issued an order asking whether appellant had submitted a certified claim to the contracting officer or whether the contracting officer had issued a decision on a certified claim. Appellant then submitted its motion to “accept correction of a defective certification.” The Board requested respondent to reply to appellant’s motion, which resulted in respondent’s submitting its motion to dismiss for lack of jurisdiction.

### Discussion

The CDA provides in pertinent part:

(a) Claims generally. --

(1) SUBMISSION OF CONTRACTOR’S CLAIMS TO CONTRACTING OFFICER. --

Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) Contractor’s claims in writing. -- Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

....

(b) CERTIFICATION OF CLAIMS. --

(1) Requirement generally. --

For claims of more than \$100,000 made by a contractor, the contractor shall certify that --

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

....

(3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION. – A contracting officer is not obligated to render a final decision on a claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

41 U.S.C. § 7103 (Supp. IV 2011). Contractor certification of claims exceeding \$100,000 is a “jurisdictional prerequisite for initiating an appeal.” 41 U.S.C. § 7103(b)(1); *United States v. Newport News Shipbuilding & Dry Dock Co.*, 933 F.2d 996, 998 (Fed. Cir. 1991); *Whiteriver Construction, Inc. v. Department of the Interior*, CBCA 2045, 10-2 BCA ¶ 34,582, at 170,487; *Hemmer - IRS Limited Partnership v. General Services Administration*, GSBCA 16134, 04-1 BCA ¶ 32,509, at 160,814. In this matter, appellant submitted an uncertified claim exceeding \$100,000 to respondent’s auditor instead of submitting a certified claim to the contracting officer. Appellant’s submission was not in compliance with 41 U.S.C. § 7103, and any contracting officer’s decision on that submission would have been a nullity. *Newport News Shipbuilding*, 933 F.2d at 998; *W. H. Moseley Co. v. United States*, 677 F.2d 850, 852 (Ct. Cl. 1982). It is not surprising, therefore, that the contracting officer did not issue a decision on appellant’s purported claim.

Appellant’s attempt at correcting what it views as a defective certification is unavailing for this docketed matter. The CDA provision allowing correction of a defective certification of a claim does not apply to a failure to submit and to certify the claim and thus

is of no assistance to appellant. 48 CFR 33.201(2012)<sup>1</sup>; *B & M Cillessen Construction Co. v. Department of Health and Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,084 (2007); *Hemmer*, 04-1 BCA at 160,814; *Golub-Wegco Kansas City I, LLC v. General Services Administration*, GSBCA 15387, 01-2 BCA ¶ 31,553, at 155,844; *Lockheed Martin Tactical Defense Systems v. Department of Commerce*, GSBCA 14450-COM, 98-1 BCA ¶ 29,717; *see also Keydata Systems, Inc. v. Department of the Treasury*, GSBCA 14281-TD, 97-2 BCA ¶ 29,330.<sup>2</sup>

### Decision

Appellant's motion for correction of defective certification is **DENIED** and respondent's motion to dismiss for lack of jurisdiction is **GRANTED**. The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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ANTHONY S. BORWICK  
Board Judge

We concur:

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CANDIDA S. STEEL  
Board Judge

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JOSEPH A. VERGILIO  
Board Judge

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<sup>1</sup> That provision of the Federal Acquisition Regulation provides in pertinent part that “[F]ailure to certify shall not be deemed to be a defective certification.”

<sup>2</sup> The Board understands that subsequent to the filing of this appeal, appellant has submitted a certified claim to the contracting officer for consideration. That submission does not apply to this appeal.