UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RELIEF FROM DECISION DENIED: April 22, 2015

CBCA 4459-R

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.

On March 4, 2015, we dismissed this case for lack of jurisdiction because no underlying claim or contracting officer decision exists. Construction Group, LLC, the appellant, moves us to grant relief from that decision, under Board Rule 27 (48 CFR 6101.27 (2014)), by concluding that we have jurisdiction over the case.

Initially, Construction Group argued that its appeal was (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. We found that the contracting officer's

letter of January 6, 2015, did not make a government claim and that the contractor had never made a claim, such that a deemed denial was not possible.

In moving for relief from decision, Construction Group focuses on its assertion that it did make a claim to which the contracting officer never responded. Specifically, the contractor points to a written communication it appears to have sent to the contracting officer on September 12, 2012. In this communication, Construction Group asked for "a FORMAL FINAL WRITTEN DECISION about Construction Group, LLC's work identified in documentation shown with both No.15 & No 16 that is accepted by the COTR [contracting officer's technical representative]." Numbers 15 and 16 are shop drawing/material approval requests from the contractor dated August 24, 2012. Each of these requests contains a great deal of information, among which is allegations that certain specifications for work to be performed are unwise.

As we explained in our earlier decision in this case, a claim is "a written demand or written assertion . . . 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." Slip op. at 3 (citing *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 (FAR))). There is no indication in either request number 15 or request number 16 that the contractor was making any of the kinds of demand which might constitute a claim. Thus, neither request provided the necessary predicate to filing an appeal on a deemed denial basis.

Construction Group makes numerous other contentions in its motion as well. It asserts that a dispute, as well as a claim, is "capable of opening the doors of jurisdiction." Cover letter to motion (Mar. 9, 2015). This theory is based on the instruction in FAR 33.211(a)(4)(i), 48 CFR 33.211(a)(4)(i) (2014), that a contracting officer's decision "shall include . . . a description of the claim or dispute." The theory is at odds not only with the Contract Disputes Act's structure, which we described in our initial decision in this case, but also with the cited FAR section, which directs contracting officers to issue decisions "[w]hen a *claim* . . . cannot be satisfied or settled by mutual agreement." *Id.* 33.211(a) (emphasis added).

Construction Group suggests that its predicament in having a subcontractor steal supplies and the Government not investigate the theft is extraordinary, so FAR part 50, "Extraordinary Contractual Actions and the SAFETY [Support Anti-terrorism by Fostering Effective Technologies] Act [of 2002]," must apply. FAR part 50 "[p]rescribes policies and

procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431-1434)." 48 CFR 50.000(a)(1). The part also "[i]mplements indemnification authority granted by Pub. L. 85-804 . . . with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in the [SAFETY] Act." *Id.* 50.000(a)(2). FAR Part 50 is not applicable to the contract which is the subject of this case. Even if it were, boards of contract appeals do not have jurisdiction to grant relief under Public Law 85-804. *Paragon Energy Corp. v. United States*, 645 F.2d 966, 974-75 (Ct. Cl. 1981); *American General Trading & Contracting, WLL*, ASBCA 56758, 12-1 BCA ¶ 34,905, at 171,639 (2011).

The contractor has made several other contentions whose relevance to the motion are not apparent to us. For example, the contractor tells us, "It is impossible to file a claim sum certain as the respondents have accepted their own uncontracted product: the subcontractor suffered the enrichment for more than the stolen copper and the use of government equipment and personnel – certainly the appellant is left as mere stink on a stick." Motion at 1. We do not find that any of these contentions supports granting the motion for relief from decision.

Decision

The motion for relief from decision is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

H. CHUCK KULLBERG
Board Judge