UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: November 2, 2015

CBCA 4957

HAMILTON PACIFIC CHAMBERLAIN, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Sean Milani-nia and Ryan Stalnaker of Fox Rothschild LLP, Washington, DC, counsel for Appellant.

Deborah K. Morrell, Office of Regional Counsel, Department of Veterans Affairs, Washington, DC, and Julie R. Zimmer, Office of Regional Counsel, Department of Veterans Affairs, Baltimore, MD, counsel for Respondent.

Before Board Judges **DRUMMOND**, **KULLBERG**, and **WALTERS**.

WALTERS, Board Judge.

Respondent, the Department of Veterans Affairs (VA), has filed a motion to dismiss the appeal for failure to state a claim upon which relief may be granted and for lack of jurisdiction, because appellant allegedly raised issues in the appeal or presented evidence to the Board that had not been presented to the contracting officer. Appellant, Hamilton Pacific Chamberlain, LLC (HPC), has filed an opposition to the motion. For the reasons stated below, we deny the motion.

Background

The appeal arises from a VA contract, contract no. VA245-13-C-0069 (contract), under which HPC was to perform certain renovations to buildings 217 and 500 at the VA Medical Center in Martinsburg, West Virginia. The parties failed to reach agreement on an HPC request for equitable adjustment (REA) dated January 23, 2015, in which it sought an adjustment to the contract price. HPC therefore submitted a letter dated May 20, 2015, to the VA contracting officer. Entitled "Certified Claim," the letter presented an HPC claim for alleged defective plans and/or specifications and for changes under the contract in the total amount of $99,372.89. The claim alleges that the VA "required multiple changes to the scope of the work" and that HPC was "forced on more than one occasion to accept unilateral changes that were unfair and in all cases less than the cost of the associated change."

In particular, the claim asserts that the contract price adjustments provided for the additional work performed by HPC under request for proposal (RFP) 4 and RFP 7 were "significantly less than the actual cost required to complete the scope of work." With respect to RFP 4, the claim sought an additional $34,164.98. For RFP 7, the claim sought an additional $57,781.91. In addition, the claim sought reimbursement of claim preparation related costs totaling $7,426. The claim was denied in its entirety by a letter to HPC from the VA contracting officer, which was designated "contracting officer's final decision" and dated July 14, 2015. HPC appealed from that decision to this Board by notice of appeal dated September 2, 2015, which notice of appeal presented HPC's complaint. Because the original complaint incorrectly referred to the January 23, 2015, REA as the "certified claim," an amended complaint was filed with the Board on October 5, 2015, in which HPC stated the correct date of the "certified claim" as May 20, 2015, and included a copy of that claim as an exhibit to the amended complaint. The instant motion was filed by respondent on the same date. An answer to the original complaint was filed by respondent on October 9, 2015. Respondent has yet to submit an answer to the amended complaint, and is directed to do so forthwith.

Discussion

The contracting officer's final decision in this case rejected HPC's claim summarily for alleged lack of adequate supporting documentation. Respondent here equates this purported lack of documentation to a failure to state a cause of action upon which relief can be granted and seeks dismissal of the appeal under Board Rule 12 (48 CFR 6101.12 (2014)) on that basis. Respondent seems to confuse appellant's burden of proof with whether or not the Board's jurisdiction has been established in order for it to entertain the appeal. Here, HPC submitted to the contracting officer for decision a written claim seeking, as a matter

of right, the payment of money in a sum certain as relief under its contract. *See K-Con Building Systems, Inc. v. United States*, 778 F.3d 1000, 1005 (Fed. Cir. 2015). The claim (Exhibit 1 to the amended complaint), in our view, presented the contracting officer with a "clear and unequivocal statement" that gave the contracting officer "adequate notice of the basis and amount of the claim," and thus satisfied the jurisdictional requirements of a "claim" under the Contract Disputes Act, 41 U.S.C. §7103 (2012) (CDA), as implemented by the Federal Acquisition Regulation (FAR), 48 CFR 2.101 (FAR 2.101). *Corrections Corp. of America v. Department of Homeland Security*, CBCA 2647, 15-1 BCA ¶ 35,971, at 175,741-42, citing *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1327 (Fed. Cir. 2010) (quoting *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1997)). And, although the claim certification tendered by HPC did not conform precisely to the certification language specified by the CDA (omitting the last two elements of the prescribed certification), HPC's claim amount falls below the statute's $100,000 threshold for requiring claim certification. *See* 41 U.S.C. § 7103(b)(1). There is no dispute that the claim was denied by the contracting officer's final decision or that the decision was timely appealed to this Board. Accordingly, all jurisdictional prerequisites for Board review under the CDA have been satisfied.

Contrary to respondent's suggestion, adequate claim documentation is not a CDA prerequisite. Moreover, the Board is not bound by any agency finding regarding documentation adequacy, and will review the contracting officer's decision de novo. *Corrections Corporation of America,* 15-1 BCA at 175,742. In short, there is no legal basis for respondent's contention that the appeal must be dismissed for failure to state a claim upon which relief may be granted.

The second ground raised in the motion for dismissal is likewise of no moment. More specifically, respondent implies that, because appellant included certain additional supporting documentation as exhibits to its complaint that had not been included with its May 20, 2015, claim package, that would be the equivalent of submitting a new claim never previously presented to the contracting officer. We recognize that the Board may not exercise its CDA jurisdiction to adjudicate claims never presented to a contracting officer for decision. *EHR Doctors, Inc. v. Social Security Administration*, CBCA 3522, 14-1 BCA ¶ 35,630, at 174,492 (citing *Santa Fe Engineers, Inc. v. United States*, 818 F.2d 856, 858 (Fed. Cir. 1987)). Respondent, however, fails to demonstrate how the additional documents in question present claims different from HPC's May 20, 2015, claim. Furthermore, just because certain documents may never have been shown to the contracting officer prior to decision does not necessarily preclude their introduction into evidence before the Board. In *McAllen Hospitals LP v. Department of Veterans Affairs*, CBCA 2774, et al., 14-1 BCA ¶ 35,758, we addressed a similar argument and rejected it:

> Respondent also asserts that, because the challenged documents were "never submitted to the Contracting Officer" as part of the claim, the Board cannot review them here. . . . Respondent is wrong. This Board's review of a challenge to a CO's final decision is *de novo*, *Bay Shipbuilding Co. v. Department of Homeland Security*, CBCA 54, et al., 07-2 BCA ¶ 33,678, at 166,743 (citing *Wilner v. United States*, 24 F.3d 1397, 1401-02 (Fed. Cir. 1994) (*en banc*)), not a review limited to an administrative record developed before the CO. Although there may be evidentiary reasons that particular documents will not be admissible in a case, appellants in CDA cases are not barred from submitting documentary evidence to the Board in support of their appeals simply because they did not originally present that evidence to the CO. *See generally H.L. Smith, Inc. v. Dalton*, 49 F.3d 1563, 1566 (Fed. Cir. 1995) (supporting documentation need not accompany CDA claim for jurisdiction to attach on appeal).

Id. at 174,976 n.10. Finally, though respondent seeks to attribute significance to HPC's error in referring to the January 23, 2015, REA in its original complaint as the CDA claim, as noted above, that error was corrected with the submission of the amended complaint.

Decision

The motion is **DENIED**.

RICHARD C. WALTERS
Board Judge

We concur:

JEROME M. DRUMMOND
Board Judge

H. CHUCK KULLBERG
Board Judge