



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: August 19, 2016

CBCA 5246

STOBIL ENTERPRISE,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Billie O. Stone, Chief Executive Officer of Stobil Enterprise, San Antonio, TX, appearing for Appellant.

Mary A. Mitchell, Office of Regional Counsel, Department of Veterans Affairs, Houston, TX, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **ZISCHKAU**, and **RUSSELL**.

**RUSSELL**, Board Judge.

Both parties have filed motions in this case. In its motion, the Department of Veterans Affairs (VA) asserts that the Board lacks jurisdiction because Stobil Enterprise (Stobil) failed to certify its claim to the contracting officer. The VA additionally argues that this appeal should be dismissed because Stobil's claim for an equitable adjustment due to increased labor rates applicable to its contract was untimely under the Service Contract Act, 41 U.S.C. §§ 6701-6707 (2012). Stobil moves for summary relief, contending that the VA failed to timely file the appeal file in this matter as required by Rule 8 (48 CFR 6101.8 (2015)) of the Board's Rules of Procedure. For reasons discussed below, the Board grants the VA's motion dismissing this appeal for lack of jurisdiction.

### Background

In December 2008, the VA awarded a contract to Stobil to provide housekeeping and dietary services for an inpatient living program at a VA facility in San Antonio, Texas. Appeal File, Vol. 1, Exhibit 3 (all exhibits are in the appeal file). Stobil provided services under the contract for about four-and-a-half years and, in June 2014 and January 2015, the VA awarded Stobil extension contracts covering the period July 2014 to January 2015. Vol. 1, Exhibit 2 at 1-2; Vol. 2, Exhibits 1-3.

In January or February 2015, Stobil filed a request with the VA seeking between \$110,000 and \$117,000 for wage increases and benefits for its employees based on prevailing wage rates established by the Department of Labor.<sup>1</sup> Vol. 1, Exhibit 2; Vol. 2, Exhibit 5. Stobil also requested approximately \$5800 in damages for goods that Stobil contended were lost or damaged during contract performance or close-out.<sup>2</sup> Vol. 1, Exhibit 2 at 1. In December 2015, the VA issued a decision on Stobil's request, providing partial relief in response to the company's request for an equitable adjustment and damages but noting that Stobil had failed to certify its claim in accordance with the Federal Acquisition Regulation at 48 CFR 33.207(a) (2015). Vol. 1, Exhibit 2. On March 17, 2016, Stobil appealed the contracting officer's December 2015 decision to the Board. In its appeal, Stobil requested \$95,001.03 for wages and benefits "plus interest, taxes, [and] fringe benefits for vacation allowances," \$6287.17 plus interest for contractor losses, and \$65,000 for loss of "contractor opportunities and administrative reimbursement."

### Discussion

The Contract Disputes Act (CDA) provides the Board with jurisdiction to resolve claims disputes between contractors and executive agencies. 41 U.S.C. §§ 7101-7109; *Bass Transportation Services, LLC v. Department of Veterans Affairs*, CBCA 4995, slip op. at 4 (July 6, 2016). However, before the Board can exercise its jurisdiction under the CDA, "there must be both a valid claim . . . and a contracting officer's final decision on that claim." *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1541-42 (Fed. Cir. 1996).

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<sup>1</sup> The contracting officer's decision states that Stobil sought \$111,560 as compensation for employee back wages and benefits. Vol. 1, Exhibit 2. In its appeal to the Board, Stobil appears to dispute this figure, stating that it sought \$116,866.40 in compensation. The difference, however, is not material to the Board's determination.

<sup>2</sup> In its appeal to the Board, although not entirely clear, it appears that Stobil disputes this figure, stating that it actually sought \$7419.99 for such damages. Again, the difference is not material to the Board's determination.

While the CDA does not define the term “claim,” the regulations implementing the statute do, and we apply the regulatory definition to determine what constitutes a claim. *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc); *Richter Developments, Ltd. v. General Services Administration*, CBCA 5119, 16-1 BCA ¶ 36,306, at 177,037; *ARI University Heights, LP v. General Services Administration*, CBCA 4660, 15-1 BCA ¶ 36,085, at 176,188; *Enterprise Information Services, Inc. v. Department of Homeland Security*, CBCA 4671, 15-1 BCA ¶ 36,010, at 175,886. The regulations set forth “three requirements of a non-routine ‘claim’ for money: that it be (1) a written demand, (2) seeking, as a matter of right, (3) the payment of money in a sum certain.” *Reflectone, Inc.*, 60 F.3d at 1575; *see* 48 CFR 2.101. These regulations also provide that a “written demand or written assertion” for payment exceeding \$100,000 is not a “claim” under the CDA until certified as required under the statute. 48 CFR 2.101; *see also* 41 U.S.C. § 7103(b). Because Stobil’s written request to the contracting officer for payment in excess of \$100,000 was uncertified, it cannot be considered a “claim” under the CDA. In the absence of a valid claim upon which a contracting officer could issue a final decision, the Board lacks jurisdiction over this appeal. Notwithstanding the lack of a valid claim, the contracting officer here issued a decision on Stobil’s request. However, the contracting officer’s decision on an invalid claim did not (and cannot) waive the CDA’s jurisdictional prerequisites to filing an appeal before the Board. *Newport News Shipbuilding & Dry Dock Co. v. Garrett*, 6 F.3d 1547, 1552-53 (Fed. Cir. 1993); *Richter Developments, Ltd.*, 16-1 BCA at 177,037 (contracting officer’s final decision on uncertified claim cannot confer jurisdiction).

In response to the VA’s motion for summary relief, Stobil contends that it certified its claim in a document dated January 18, 2016. Assuming that the January 18, 2016, document can be construed as a certified claim, the document post-dates the contracting officer’s December 2015 decision and, thus, cannot cure the jurisdictional defect. *Regency Construction, Inc. v. Department of Agriculture*, CBCA 3246, et al., slip op. at 25 (Aug. 17, 2016); *B&M Cillessen Construction Co. v. Department of Health & Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,085 (2007).

It bears noting that, apparently for the first time before the Board, Stobil sought \$65,000 for loss of “contractor opportunities and administrative reimbursement.” The Board, however, “cannot assume jurisdiction over a contractor’s request for monetary relief unless the contractor previously submitted to the agency’s contracting officer, in writing, a claim seeking payment of a sum certain and requesting a final decision.” *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871, et al., 15-1 BCA ¶ 35,928, at 175,603 (citing 41 U.S.C. § 7103(a)(1), (2)). “The purpose of this requirement is to allow the [contracting officer] to pass judgment on the contractor’s entire claim” prior to an appeal being filed. *McAllen Hospitals LP v. Department of Veterans Affairs*, CBCA 2774, et al., 14-1 BCA ¶ 35,758, at 174,971. It does not appear that Stobil submitted a claim to the

contracting officer for loss of “contractor opportunities and administrative reimbursement” prior to seeking relief from the Board. The Board cannot exercise jurisdiction over a claim that was not (a) presented to the contracting officer, and (b) either decided by the contracting officer or deemed denied. 41 U.S.C. §§ 7103(f), 7104. Thus, even if the certification problem was not present, the Board could not consider this particular matter.

Although the Board does not have jurisdiction over this appeal, Stobil is not precluded from pursuing its claim. It must, however, follow prescribed rules to obtain review of the claim. *Whiteriver Construction, Inc. v. Department of the Interior*, CBCA 2045, 10-2 BCA ¶ 34,582, at 170,487. The contractor must, as a threshold matter, submit a properly certified claim to the contracting officer and await the contracting officer’s decision on that claim. 41 U.S.C. § 7103; *Red Gold, Inc. v. Department of Agriculture*, CBCA 2259, 12-1 BCA ¶ 34,921, at 171,722 (2011); 48 CFR 33.207(a). If, pursuant to 41 U.S.C. § 7103(f), the contracting officer fails to render a timely decision on the claim or Stobil is otherwise dissatisfied with the decision, Stobil may then seek relief from the Board or the Court of Federal Claims.<sup>3</sup> *Red Gold, Inc.*, 16-1 BCA at 171,722. At this time, however, the Board lacks jurisdiction to consider Stobil’s claim. Consequently, because the Board lacks jurisdiction, the company’s motion cannot be considered. *Booth v. United States*, 990 F.2d 617, 620 (Fed. Cir. 1993).

### Decision

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

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BEVERLY M. RUSSELL  
Board Judge

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<sup>3</sup>The CDA, at 41 U.S.C. § 7103(f), requires a contracting officer, within 60 days of “receipt of a submitted certified claim over \$100,000,” to render a final decision or to “notify the contractor of the time within which a decision will be issued.” A contractor may appeal the contracting officer’s decision to the Board within ninety days of receipt of the final decision or, alternatively, may appeal the contracting officer’s final decision to the Court of Federal Claims within twelve months from the date of receipt of the decision. 41 U.S.C. § 7104.

We concur:

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STEPHEN M. DANIELS  
Board Judge

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JONATHAN D. ZISCHKAU  
Board Judge