



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: March 15, 2016

CBCA 5193

MOSS CARD CONSULTING, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Carol Moss, President of Moss Card Consulting, Inc., Cleveland, OH, appearing for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Judges **GOODMAN**, **SHERIDAN**, and **SULLIVAN**.

SHERIDAN, Board Judge.

Appellant, Moss Card Consulting, Inc. (Moss), filed an appeal with the Civilian Board of Contract Appeals asking the Board to award it \$5000 under General Services Administration (GSA) contract GS-35F-0541T. In response to a show cause order issued by the Board on February 17, 2016, the parties have jointly moved to Board to dismiss the appeal for lack of jurisdiction.

Findings of Fact

In appears from the correspondence submitted with the notice of docketing that sometime in 2012 Moss asked GSA contracting officer (CO) Gary Davis to modify schedule contract GS-35F-0541T. Mr. Davis informed Moss that the contract had expired and denied the request to modify. On January 19, 2016, Moss filed a notice of appeal with the CBCA which stated:

On behalf of Moss Card Consulting Inc., I would like to request the guaranteed minimum per our cancelled GSA contract no. GS-35F-0541T, schedule 70 SIN 132-51. On December 2012 our contract was suspended by contracting officer Gary Davis due to our sales falling below the required \$25,000.00 sales. On February 3, 2015 our eOffer was rejected and our contract was officially cancelled. To date we have received no funds for the two SIN or the schedule 70 per our contract. We are officially requesting that you release a total of \$5000.00 for the guaranteed minimum under our contract clause.

Please accept Moss Card Consulting, Inc. formal request for funds due us under this contract.

The Board docketed the matter as CBCA 5193.

On March 9, 2016, a telephone conference was conducted between the parties' representatives and the Board to discuss the jurisdictional elements pertinent to this appeal. During that conference call the parties agreed that the matter had not yet been presented to the contracting officer for a final decision. Following the conference call, the parties jointly moved that the appeal be dismissed for lack of jurisdiction.

Discussion

The Board derives its jurisdiction to consider contract disputes from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012). For the Board to have jurisdiction over a dispute not involving a government claim, the CDA requires a contractor to submit a written claim to the contracting officer for a final decision. 41 U.S.C. § 7103(a). The CDA does not define "claim," so the Board looks to the definition provided in the Federal Acquisition Regulation (FAR). *See ePlus Technology, Inc. v. Federal Communications Commission*, CBCA 2573, 12-2 BCA ¶ 35,114, at 172,434 (citing *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc)). The FAR defines a "claim" as "a written demand or written assertion by one of the contracting parties 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 relating to” th[e] contract.” 48 CFR 52.233-1(c) (2015). “The ‘claim need not be submitted in any particular form or use any particular wording,’ but ‘must contain “a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim.”’” *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)). The intent of the communication governs, and the Board must use a common sense analysis to determine whether the contractor communicated its desire for a contracting officer’s decision. *Kevin J. LeMay v. General Services Administration*, GSBCA 16093, 03-2 BCA ¶ 32,345, at 160,041; *see also ePlus Technology*, 12-2 BCA at 172,434.

It is incumbent upon a contractor to submit to the contracting officer a claim that contains a clear and unequivocal statement that gives adequate notice of the basis and amount of the claim. Based upon our review of the correspondence submitted with the notice of appeal, Moss has not submitted a claim to the contracting officer and, therefore, its appeal must be dismissed for lack of jurisdiction.

Decision

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

PATRICIA J. SHERIDAN
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

MARIAN E. SULLIVAN
Board Judge