



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: November 15, 2017

CBCA 5850

HANKS, HANKS & ASSOCIATES, LLC,

Appellant,

v.

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE
DISTRICT OF COLUMBIA,

Respondent.

James S. DelSordo of Argus Legal, PLLC, Manassas, VA, counsel for Appellant.

Marvelle L. Butler, Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **SULLIVAN**, and **RUSSELL**.

SULLIVAN, Board Judge.

On September 13, 2017, the Board docketed an appeal filed by Hanks, Hanks & Associates (HHA) of a contracting officer's decision, dated March 3, 2017, issued by the Court Services and Offender Supervision Agency for the District of Columbia (hereinafter agency). The Board issued two show cause orders—the first seeking proof the appeal was timely and the second seeking proof that HHA had submitted a justiciable claim to the agency prior to the issuance of the contracting officer's decision. The Board dismisses the

appeal for lack of jurisdiction because HHA had not submitted the required certified claim at the time the contracting officer issued his decision, rendering the decision a nullity.

Background

On August 5, 2016, HHA submitted an uncertified “settlement proposal for cost” signed by Ms. Hanks, owner of HHA, seeking payment of \$193,892. On March 3, 2017, the agency sent the contracting officer’s decision to HHA via certified mail and email. After the decision was returned by the post office as undeliverable on March 21, 2017, the agency contacted HHA to obtain a new address. The agency addressed the package containing the contracting officer’s decision in its original packaging to the new address on the same day. The agency provided copies of the certified mail receipt showing a mailing date of March 21, 2017, and the return receipt mailing, showing delivery to HHA’s offices on March 23, 2017.

HHA provided a declaration from Ms. Hanks stating that a vice president of HHA did not receive the contracting officer’s decision until August 4, 2017, when a receptionist handed the letter to her at the shared office space that HHA occupies. HHA also provided email messages from March 2017 and an unsigned letter from HHA’s counsel dated May 5, 2017, as evidence that HHA had not received the contracting officer’s decision prior to the dates of those inquiries. In the May 5, 2017, letter, HHA stated that the total amount owed was \$198,443.21, and demanded payment of these amounts or a contracting officer’s final decision denying the amount claimed. The May 5 letter also includes an unsigned certification by Ms. Hanks stating that the claim is made in good faith, that the supporting data are accurate and complete, that the amount reflects the contract adjustment for which HHA believes the agency is liable, and that she is duly authorized to certify the claim on behalf of HHA.

Discussion

The Board’s jurisdiction to entertain appeals involving contract disputes derives from the Contract Disputes Act (CDA). 41 U.S.C. §§ 7101-7109 (2012). The CDA provides “jurisdictional prerequisites to any appeal.” *England v. Swanson Group, Inc.*, 353 F.3d 1375, 1379 (Fed. Cir. 2004). “If jurisdiction is found to be lacking, the Board must dismiss the case.” *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871, et al., 15-1 BCA ¶ 35,928, at 175,602 (citing *Universal Canvas, Inc v. Stone*, 975 F.2d 847, 850 (Fed. Cir. 1992)).

As a prerequisite to review by the Board, the CDA requires that the contractor, if it is seeking the payment of money from the Government or adjustment or interpretation of

contract terms, have submitted a written claim to the Government. 41 U.S.C. § 7103(a)(1). Contractor claims in excess of \$100,000 must be certified as to accuracy by a duly authorized representative of the contractor. *Id.* § 7103(b)(1). Additionally, a contracting officer's decision on the claim, or failure to issue a decision within the prescribed period, is a prerequisite for review by the Board. *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1328 (Fed. Cir. 2010) (citing *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1541-42 (Fed. Cir. 1996)); *Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,118-19.

The Federal Acquisition Regulation (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 [a] contract.” 48 CFR 2.101(b)(2) (2016). An uncertified request for payment in excess of \$100,000 “is not a claim under [the CDA] until certified as required by the statute.” *Id.* The submission of an uncertified claim in excess of \$100,000 “is, in effect, a legal nullity.” *Fidelity Construction Co. v. United States*, 700 F.2d 1379, 1384 (Fed. Cir. 1983).

We need not resolve the timeliness issue concerning HHA's receipt of the March 3, 2017, contracting officer's decision because, as HHA acknowledges, the August 5, 2016, submission to the agency was not a claim. Because HHA did not certify its submission, “it was not a claim, and we lack jurisdiction to entertain an appeal arising from it.” *Foxy Construction, LLC v. Department of Agriculture*, CBCA 5632, 17-1 BCA ¶ 36,687, at 178,628 (citing *B&M Cillessen Construction Co. v. Department of Health & Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,084 (2007)). The fact that the contracting officer issued a decision in response to the August 5, 2016, submission does not eliminate this jurisdictional defect because “[a] contracting officer's decision rendered on an uncertified [claim] is a ‘nullity.’” *Regency Construction, Inc. v. Department of Agriculture*, CBCA 3246, et al., 16-1 BCA ¶ 36,468, at 177,705 (quoting *EHR Doctors, Inc. v. Social Security Administration*, CBCA 3426, 13 BCA ¶ 35,371, at 173,572). HHA “cannot retroactively meet this requirement—for the purpose of direct judicial review—by certifying the claim after the final decision of the contracting officer.” *Id.* at 177,705 (quoting *Skelly & Loy v. United States*, 685 F.2d 414, 416 (Ct. Cl. 1982)).

HHA asserts that the Board possesses jurisdiction because it presented a certified claim to the agency in its May 5, 2017, letter and, after sixty days, the claim was deemed denied under 41 U.S.C. § 7103(f). Jurisdiction must be “established at the time that a notice of appeal is filed.” *I-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,563. The notice of appeal “establishes the bounds of jurisdiction.” *Safe Haven*, 15-1 BCA at 175,603 (quoting *Gardner Zemke Co.*, IBCA 2626,

90-3 BCA ¶ 23,064, at 115,800 n.7). “The lack of a claim cannot be cured later.” *EnergX, LLC v. Department of Energy*, CBCA 3060, 17-1 BCA ¶ 36,633, at 178,415 (citing *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5246, 16-1 BCA ¶ 36,478, at 177,741, *motion for reconsideration denied*, 17-1 BCA ¶ 36,610). The only basis HHA identified for jurisdiction in its notice of appeal was the March 3, 2017, contracting officer’s decision. Because there is no underlying claim and the decision was a nullity, we lack jurisdiction to consider the appeal.

Decision

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

MARIAN E. SULLIVAN
Board Judge

We concur:

JOSEPH A. VERGILIO
Board Judge

BEVERLY M. RUSSELL
Board Judge