



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: November 15, 2017

CBCA 5871

PROS CLEANERS,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Bruce Webber, President of Pros Cleaners, Kenner, LA, appearing for Appellant.

Erik Claudio and Hillary J. Freund, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **ZISCHKAU**, and **SULLIVAN**.

SULLIVAN, Board Judge.

When this appeal was filed, the Board directed appellant, Pros Cleaners, to show cause why its appeal should not be dismissed for lack of jurisdiction because it had not submitted a claim to the contracting officer prior to filing its appeal. In response, Pros Cleaners explains that it requested a final decision from the contracting officer, but that request was made after it filed its notice of appeal. Because the Board does not find a claim to the contracting officer that preceded the filing of this appeal, the Board dismisses the appeal for lack of jurisdiction.

On October 3, 2017, the Board docketed an appeal filed by Pros Cleaners arising from a contract with the Federal Emergency Management Agency (FEMA) to provide unskilled laborers to support a disaster response effort. In the notice of appeal, Pros Cleaners describes an exchange of email messages between itself and the FEMA contracting officer regarding some future work for Pros Cleaners to perform pursuant to its contract and a subsequent email response from the contracting officer, all dated September 29, 2017.

In a show cause order issued on October 4, 2017, the Board advised the parties that it did not appear that Pros Cleaners had submitted a claim to the contracting officer. Responding to the Board's show cause order, Pros Cleaners submitted a copy of an email message dated October 13, 2017, to the contracting officer requesting a final decision. In the October 13 email message, Pros Cleaners states a claim for \$600,000 for breach of contract, and indicates that the claim is an estimate until it can obtain further discovery.

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 requires as a prerequisite to review by the Board 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. *Id.* § 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).

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 the 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.* "While a valid claim under the CDA must contain 'a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim,' the claim need not take any particular form or use any particular wording." *Northrop Grumman Computing Systems, Inc. v. United States*, 709 F.3d 1107, 1112 (Fed. Cir. 2013) (quoting *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987)). A claim containing only an estimate or approximation of the amount that the contractor believes was owed does not satisfy the "sum certain" requirement of the CDA. *Foxy Construction, LLC v. Department of Agriculture*, CBCA 5632, 17-1 BCA ¶ 36,687, at 178,628.

Once a claim is submitted, the contracting officer must have an opportunity to respond to it before judicial review can commence. Under the CDA, "[a] contracting officer shall issue a decision on any submitted claim of \$100,000 or less within 60 days from the

contracting officer's receipt of a written request from the contractor that a decision be rendered within that period." 41 U.S.C. § 7103(f)(1). "Until there is a decision on [the contractor's] claim, or the date for issuance passes, [the contractor] cannot maintain an appeal with the Board or a suit at the Court of Federal Claims on its claim." *Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,119. An appeal filed before there is a contracting officer's decision (either written or through a deemed denial after the statutory deadline has passed) is premature, *Fire Security Systems, Inc. v. General Services Administration*, GSBCA 12350, 93-3 BCA ¶ 26,047, at 129,487, and we lack jurisdiction to entertain it. *1-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,564.

Pros Cleaners' September 29, 2017, email message to the contracting officer was not a claim because it did not contain a clear statement providing notice of a claim and the amount of the claim. Pros Cleaners' subsequent October 13 submission to the contracting officer does not provide the Board jurisdiction over the current appeal because jurisdiction must be "established at the time that a notice of appeal is filed." *1-A Construction*, 15-1 BCA at 175,563. "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). As the September 29 email message was not a claim, the Board finds that it lacks jurisdiction over the current appeal.

Decision

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

MARIAN E. SULLIVAN
Board Judge

We concur:

PATRICIA J. SHERIDAN
Board Judge

JONATHAN D. ZISCHKAU
Board Judge