



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: December 20, 2017

CBCA 5927, 5928, 5929

VETERANS CONTRACTING GROUP, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Paul G. Ryan of Welby, Brady & Greenblatt, LLP, White Plains, NY, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs, Pittsburgh, PA; and Donald C. Mobly, Office of General Counsel, Department of Veterans Affairs, Denver, CO, counsel for Respondent.

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

SULLIVAN, Board Judge.

On November 16, 2017, the Board docketed three appeals from a single contracting officer's decision on a single claim submitted by appellant, Veterans Contracting Group, Inc. (VCG). These appeals were consolidated for the purposes of submission of the initial pleadings and the appeal file.

In its claim to the contracting officer, VCG sought a final decision on three change proposals, which sought payments of \$59,251 (change proposal (CP)-1), \$89,179 (CP-2), and

\$113,483 (CP-3), respectively. Although the sum of the three change proposals was greater than \$100,000, VCG's claim did not appear to be certified. On November 20, 2017, the Board ordered VCG to show cause why its appeals should not be dismissed for lack of jurisdiction. On December 7, 2017, the parties filed a joint stipulation of withdrawal of the appeals to allow VCG to resubmit the claims with appropriate certification.

The Board's jurisdiction to entertain contract disputes derives from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), which requires as a prerequisite to review by the Board that the contractor, if it is seeking the payment of money from the Government, have submitted a claim to the Government. *Id.* § 7103. If the amount claimed is greater than \$100,000, the CDA further requires that the claim be certified. 41 U.S.C. § 7103(b). "Certification of a claim of more than \$100,000 is not only a statutory requirement, but also a jurisdictional prerequisite for review of a contracting officer's decision before this Board." *B&M Cillessen Construction Co. v. Department of Health & Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,084 (2007). "The submission of an uncertified claim, for purposes of the CDA, is, in effect, a legal nullity . . ." *Fidelity Construction Co. v. United States*, 700 F.2d 1379, 1384 (Fed. Cir. 1983). "Although a defective certification may be corrected, a failure to certify may not." *B&M Cillessen*, 08-1 BCA at 167,084 (quoting *K Satellite v. Department of Agriculture*, CBCA 14, 07-1 BCA ¶ 33,547, at 166,154).

Decision

The appeals are **DISMISSED FOR LACK OF JURISDICTION**.

MARIAN E. SULLIVAN
Board Judge

We concur:

PATRICIA J. SHERIDAN
Board Judge

JONATHAN D. ZISCHKAU
Board Judge