



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: December 20, 2017

CBCA 5940

PROS CLEANERS,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

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

Nathaniel Greeson 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.

On November 20, 2017, Pros Cleaners filed its appeal of its request to the contracting officer for a decision on its claim for \$600,000. To its appeal, Pros Cleaners attached its claim to the contracting officer, dated October 13, 2017. Pros Cleaners did not include in its notice of appeal any evidence that it had certified its claim to the contracting officer.

On November 27, 2017, the Board ordered appellant, Pros Cleaners, to show cause by December 4, 2017, why its appeal should not be dismissed for lack of jurisdiction. Pros Cleaners did not respond to the Board's order.

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). The CDA further requires that a contractor appeal only after either the contracting officer has issued a decision or sixty days have passed since the date the certified claim was submitted for decision without notice from the contracting officer of the time within which the decision will be issued. 41 U.S.C. § 7103(f); *BES Design/Build, LLC v. Department of Veterans Affairs*, CBCA 5529, 17-1 BCA ¶ 36,640.

Based upon the material submitted with the notice of appeal, Pros Cleaners did not certify its claim to the contracting officer and did not wait the required sixty days to file its appeal. The Board lacks jurisdiction to consider its appeal.¹

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This appeal is the second appeal filed recently by Pros Cleaners that the Board has dismissed for lack of jurisdiction. The ABA Public Contract Law Manual, Practicing Before the Federal Boards of Contract Appeals, contains valuable information on how to process appeals before the CBCA. The manual may be found on the Board's website (cbca.gov) by first clicking on "How to File," next clicking on "Filing Cases," and finally clicking on "American Bar Association Manual."

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