



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: November 28, 2017

CBCA 5856

LUMAR INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Jerry Martinez, Owner of LUMAR Inc., Mora, NM, appearing for Appellant.

Daniel B. Rosenbluth, Office of the General Counsel, Department of Agriculture, Lakewood, CO, counsel for Respondent.

Before Board Judges **VERGILIO**, **SHERIDAN**, and **LESTER**.

VERGILIO, Board Judge.

On September 18, 2017, the Board received from LUMAR Inc. a notice of appeal concerning its lease, 57-8C30-15-0010, with the Department of Agriculture. The submission includes a contracting officer decision which is said to deny the underlying contractor claim for a lump sum payment of \$101,329.39 associated with the termination for convenience of the contract. The contractor has provided no evidence, in response to an order to show cause, that a certified claim was submitted to the contracting officer. Based upon the record, the Board concludes that a properly certified claim was not presented to the contracting officer. A certified claim, a necessary prerequisite for this Board's jurisdiction over this appeal, is lacking. 41 U.S.C. § 7103(b) (2012). Well-established case law so interprets the statute and also provides guidance this contractor may find beneficial, in that the "only recourse is to proceed properly under the Act. 'The proper course of action—for a contractor whose case is dismissed for lack of jurisdiction—is the following: (1) properly certify the claim; (2)

resubmit the claim to the contracting officer; and (3) if there is then an adverse contracting officer's decision, appeal either to the board . . . or directly to [the Court of Federal Claims].” *W.M. Schlosser Co. v. United States*, 705 F.2d 1336, 1340 (Fed. Cir. 1983) (internal citation omitted and court name updated).

Decision

The Board does not reach the merits of the appeal; instead, the appeal is **DISMISSED FOR LACK OF JURISDICTION**.

JOSEPH A. VERGILIO
Board Judge

We concur:

PATRICIA J. SHERIDAN
Board Judge

HAROLD D. LESTER, JR.
Board Judge