



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: December 12, 2018

CBCA 5989, 6066, 6067, 6068, 6082

U.S. ARMY TACTICAL SUPPLY,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Mohammad Wali Mohammad, Chief Executive Officer of U.S. Army Tactical Supply, Kuwait City, Kuwait, appearing for Appellant.

Dennis J. Gallagher, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **DRUMMOND**, and **KULLBERG**.

KULLBERG, Board Judge.

The Board has raised the issue of whether it has jurisdiction to hear the appeals, CBCA 5989, 6066, 6067, 6068, and 6082. Respondent, the Department of State (DOS), states that appellant, U.S. Army Tactical Supply (USATS), did not submit any claims to the contracting officer with a request for a final decision before filing its appeals, and USATS has not shown otherwise. For the reasons stated below, the appeals are dismissed for lack of jurisdiction.

Findings of Fact

USATS filed its appeals, CBCA 5989, 6066, 6067, 6068, 6082, with the Board citing a lack of payment for deliveries to various embassies. None of USATS' notices of appeal included a copy of either a contracting officer's (CO's) decision or a claim that requested the CO's decision. Subsequent to the docketing of these appeals, the Board raised the issue of whether it had jurisdiction to hear these appeals and directed the parties to show whether USATS had submitted any claims to the CO with a request for the CO's decision before filing these appeals. The DOS represented that it had received no claim from USATS that requested a CO's decision and requested that these appeals be dismissed. The Board ordered USATS to show cause why these appeals should not be dismissed for lack of jurisdiction. USATS failed to show that it had submitted any claims to the CO with a request for a CO's decision in connection with any of its appeals.

Discussion

The issue in this matter is whether the Board has jurisdiction to hear USATS' appeals based upon only its allegations that it had not been paid for purchases by various embassies. The Contract Disputes Act (CDA), provides that "[e]ach claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision." 41 U.S.C. § 7103(a)(1) (2012). A contractor may appeal a CO's decision or appeal the deemed denial of a claim when the CO fails to issue a timely decision. *Id.* § 7103(f)(5). The Federal Acquisition Regulation (FAR) defines a claim as follows:

Claim means 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. . . . A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

48 CFR 2.101(b) (2016) (FAR 2.101(b)).

USATS has failed to establish that it filed any claims as required under the CDA and as defined under FAR 2.101(b) before filing its appeals at the Board. In the case of each of the appeals, the record before the Board lacks either a CO's decision from which USATS could bring an appeal or a claim from which USATS could appeal a deemed denial of its

claim. At most, USATS has shown that it was waiting for payment when it filed its appeals, but the record does not show that payment had been unreasonably delayed. Consequently, the Board lacks jurisdiction to hear these appeals.

Decision

The appeals, CBCA 5989, 6066, 6067, 6068, and 6082, are **DISMISSED FOR LACK OF JURISDICTION**.

H. Chuck Kullberg

H. CHUCK KULLBERG

Board Judge

We concur:

Joseph A. Vergilio

JOSEPH A. VERGILIO

Board Judge

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge