



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: October 15, 2018

CBCA 6259

VETERANS CONTRACTING, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Scott R. Sylkatis of Sylkatis Law, LLC, Amherst, OH, counsel for Appellant.

Hank W. Askins III, Office of the General Counsel, Department of Veterans Affairs, Charleston, SC, counsel for Respondent.

Before Judges **HYATT**, **VERGILIO**, and **SHERIDAN**.

SHERIDAN, Board Judge.

On June 4, 2018, VCI sent a request for equitable adjustment (REA) in an email message to VA seeking “39 days of lost work due to shutdowns for noise/odors/VA personnel being in town and due to infill material not being available for the excessive [material] that was removed.” The email attachments contained some proposed costing information, but it is unclear the amount VCI sought.

On September 26, 2018, VCI submitted a notice of appeal requesting the Board award appellant \$157,701.51. On September 27, 2018, the Board issued an order to show cause directing VCI to address whether the REA constituted a proper claim and was appropriately certified pursuant to the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012) (CDA). A telephone conference was conducted on October 4, 2018, between the parties’ counsel and

the Board to discuss jurisdictional elements pertinent to this appeal. During that conference call, the appellant indicated that the REA had not been certified. Following the conference call, the parties jointly moved that the appeal be dismissed for lack of jurisdiction because appellant failed to certify its claim.

Discussion

The Board derives its jurisdiction to consider contract disputes from the CDA which provides that “each claim by a contractor against the Federal Government relating to a contract [shall be in writing and] shall be submitted to the contracting officer for a decision.” 41 U.S.C. § 7103(a)(1). The Federal Acquisition Regulation (FAR) defines “claim” as “a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.” 48 CFR 52.233-1(c) (2018). Interpreting the CDA and FAR, the Court of Appeals for the Federal Circuit has established that for jurisdictional purposes, a CDA claim exists for a nonroutine contract adjustment if there is: (1) a written demand, (2) seeking, as a matter of right, (3) the payment of money in a sum certain. *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc). Certification of a claim of more than \$100,000 is a jurisdictional prerequisite. *Fidelity Construction Co. v. United States*, 700 F.2d 1379, 1384 (Fed. Cir. 1983).

VCI’s REA cannot be deemed a CDA claim because it fails to satisfy several jurisdictional prerequisites. Based on the material submitted with the notice of appeal, VCI’s REA did not make clear it sought a contracting officer’s final decision, did not contain a sum certain, and was not certified.

Decision

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

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge