



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: June 19, 2020

CBCA 6703

RAPID TEMPS, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Ivonne Ararat, Director of Accounting, Rapid Temps, Inc., Albuquerque, NM, appearing for Appellant.

Brian Reed, Office of General Counsel, Department of Veterans Affairs, Charleston, IL, counsel for Respondent.

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

GOODMAN, Board Judge.

On January 7, 2019, appellant Rapid Temps, Inc. filed this appeal from a letter from a contracting officer of the respondent Department of Veterans Affairs which denied payment for two invoices submitted during the performance of a firm fixed-price Task Order. We grant respondent's motion to dismiss the appeal for lack of jurisdiction, because an underlying claim is lacking.

Background

On October 2, 2019, appellant received from the contracting officer a letter dated that same day stating that two invoices that had been submitted as routine requests for payment under the task order would not be paid. The invoices indicated that they were for the services of a computer tomography technician (CTT) who had performed for several weeks on site. Payment was rejected by respondent because allegedly the services provided by the CTT were not within the scope of the contract, as the letter stated that he “shadowed VA staff and received training from VA staff.”

On October 2, 2019, soon after receiving the contracting officer’s letter, appellant’s Chief Operating Officer (COO) sent an email to the contracting officer asking “Is there another level to dispute this? We are a small business and cannot afford for this to happen.”

The contracting officer responded via email on October 3, 2019, referring appellant to Federal Acquisition Regulation (FAR) 1.602-3(d).¹ On October 4, 2019, appellant’s COO responded, “Thanks for the info – the issue I have is that if he was not acceptable and you were training [him], how come it took 4 weeks? That should have been know he was not acceptable within 7 days.” The contracting officer responded by email on October 4, 2019, stating, “I cannot respond to what happened because I was not aware of what was going on either.”

On December 2, 2019, an individual from appellant’s accounts receivable office sent an email to the contracting officer stating:

I am writing to seek assistance with the rejection of two invoices (99515D, and 99764D) submitted under PO 695C90231, for technician . . . Per the official rejection, herein attached, the technician only received training and did not provide any services to the VA. Rapid Temps feels this should have been determined after the first week of performance instead of four weeks later. It is unreasonable to claim that services were not provided at that point in time. As you can understand for a SDVOSB it is financial hardship to pay the technician for this period of time without receiving compensation. Rapid Temps would like to have this issue resolved as quickly as possible. Would you please help direct me towards an avenue of disputing this rejection. I would greatly appreciate it.

¹ This regulation does not include directions to appeal a dispute to this Board.

That same day, the contracting officer responded by email by forwarding a copy of her October 3, 2019 email, referencing the FAR provision.

In its notice of appeal dated January 10, 2020, appellant states that it is “appealing the decision by Contracting Officer . . . rejecting payment for invoices 99515D and 99764D totaling \$7,008.50,” and attached the October 2, 2019 letter denying payment of the two invoices.

Discussion

Respondent has filed a motion to dismiss this appeal for lack of jurisdiction, asserting that appellant has not submitted a claim pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109. The Board has jurisdiction under the CDA only after a claim is presented to the contracting officer and is either decided or deemed denied, and the contractor files a timely appeal. *Magwood Services, Inc., v. General Services Administration*, CBCA 5869, 17-1 BCA ¶ 36,875; *Bass Transportation Services, LLC v. Department of Veterans Affairs*, CBCA 4995, 16-1 BCA ¶ 36,464.

In *Primestar Construction v. Department of Homeland Security*, CBCA 5510, 17-1 BCA ¶ 36,612, (2016) the Board identified the requirements that a contractor must satisfy if it wishes to pursue a request for affirmative monetary relief from the Government:

Before the Board can exercise jurisdiction over a contractor’s request for monetary damages, the contractor must have submitted a written claim to the contracting officer for a decision. . . . There are three basic requirements for a valid CDA monetary claim: (1) the contractor must submit the demand in writing to the contracting officer, (2) the contractor must submit the demand as a matter of right, and (3) the demand must include a sum certain. . . . The CDA also requires that a claim indicate to the contracting officer that the contractor is requesting a final decision,” although this request need not be explicit.

(Internal quotation marks and citations omitted).

The *Primestar* decision also emphasized that a routine request for payment, such as an invoice for regular payment under a contract, is not a claim. *Reflectone, Inc. v. United States*, 60 F.3d 1572, 1577 (Fed. Cir. 1995). Thus, the two invoices appellant submitted and which were denied for payment were not claims, nor was the contracting officer’s October 2, 2019 letter denying payment of the invoices an appealable decision on a claim.

Thereafter, while appellant asked for clarification as to the reasons for the rejection of payment and the avenues for resolving the dispute, appellant did not request a sum certain or a final decision from the contracting officer, and appellant's communications after receiving the contracting officer's October 2, 2019 letter were, therefore, not claims. The information appellant received from respondent in response to these communications was merely a reiteration of what was stated in a previous email. When appellant filed its notice of appeal, it had neither submitted a claim nor received an appealable decision from the contracting officer.

Decision

As the contractor has not submitted a claim to the contracting officer pursuant to the CDA, nor received a decision from the contracting officer on a claim, respondent's motion is **GRANTED** and this appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge