



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: January 2, 2025

CBCA 8256

JOHN BLANKSON,

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

John Blankson, pro se, Newark, NJ.

Rachel B. Cochran and Danielle K.S. Lindermuth, Office of the General Counsel, Agency for International Development, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **KULLBERG**, and **NEWSOM**.

KULLBERG, Board Judge.

Respondent, the United States Agency for International Development (USAID), has filed a motion to dismiss this appeal for lack of jurisdiction. USAID contends that appellant has only appealed the contracting officer's (CO's) termination of appellant's contract for convenience, and appellant has not submitted a claim requesting a CO's final decision (COFD). Appellant argues that he filed this appeal in response to the CO's letter that notified him of the termination of his contract for convenience, and he has elected to have his appeal heard pursuant to the Board's small claims procedure, Rule 52 (48 CFR 6101.52 (2023)). For the reasons set forth below, the Board dismisses this appeal for lack of jurisdiction.

Background

On June 13, 2024, USAID awarded to appellant contract 7206242S00013 (contract) for personal services, senior development outreach and communication specialist, at USAID's West Africa regional executive office in Accra, Ghana. The contract had an effective date of July 8, 2024, and the period of performance included a base period and three option periods. Contract clause 16, termination, provided, in pertinent part, the following:

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

.....

(2) For the convenience of USAID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any unused vacation leave, return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rate specified in the contract and subject to the limitations which apply to authorized travel status.

By letter dated October 3, 2024, the CO terminated appellant's contract for convenience. The CO's letter stated the following:

The Senior Development Outreach and Communication (DOC) specialist position requires a commitment to working within USAID and U.S. Embassy structures. It requires developing and maintaining close working relationships within the Embassy and with USAID's Bureau for Legislative and Public Affairs (LPA). Given your stated preference for working independently rather than collaboratively, your reluctance to engage in public events fully, and your resistance to working within our established USAID and Embassy frameworks for approvals and clearances, I have reached the conclusion that continuing your contract with USAID/West Africa is not in the Government's interest.

The letter further stated that it was "the final decision of the Contracting Officer," and it listed appellant's right to file an appeal, which included filing an appeal with "the agency board of contract appeals" and the option of requesting the "[s]mall claim procedure for claims of \$50,000 or less."

Appellant subsequently filed an appeal with the Board and requested that this appeal be heard under the Board's small claims procedure. USAID submitted a motion to dismiss

this appeal for lack of jurisdiction on the grounds that appellant has not submitted a claim to the CO. Appellant filed an opposition to USAID's motion to dismiss and argued that the appeal was in accord with the guidance in USAID's letter that notified him of the termination of the contract for convenience.

Discussion

At issue is whether the CO's notice of termination of appellant's contract for convenience was a COFD that may be appealed to this Board. 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) (2018). A contractor may appeal a COFD or appeal the deemed denial of a claim when the CO fails to issue a timely decision. *Id.* § 7103(f)(5)-(g). 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 (FAR 2.101).

Although appellant contends that the CO's notice of the termination of his contract for convenience was a COFD, the requirements for the Board's jurisdiction under the CDA have not been met in this case. This Board has recognized that the "termination of a contract for the convenience of the Government is not in and of itself an appealable contracting officer decision within the terms of the CDA." *Frank Bonner v. Department of Homeland Security*, CBCA 605, et al., 07-2 BCA ¶ 33,592, at 166,387 (citing *Larry G. Pyle*, ASBCA 41155, 90-3 BCA ¶ 23,252, at 116,668; *Baranof Mental Health Clinic*, ASBCA 33172, 87-1 BCA ¶ 19,346, at 97,869 (1986); *Naranjo Sales, Inc.*, ASBCA 32872, 86-3 BCA ¶ 19,214, at 97,181). Appellant has not submitted a claim to the CO for any amount, and the CO has not asserted a claim against appellant. Although USAID's letter represented that it was a "final decision," that letter was not a COFD, but rather, it was only a notice of the termination of appellant's contract for convenience. The Board, accordingly, has no jurisdiction to hear this appeal.

Appellant contends that he filed this appeal as instructed by USAID's letter, and he elected the Board's small claims procedure in this appeal. As discussed above, the Board lacks jurisdiction to hear this appeal, and "[p]arties cannot bestow subject jurisdiction upon the board and the board cannot exceed its jurisdictional boundaries." *Universal Canvas, Inc. v. Stone*, 975 F.2d 847, 850 (Fed. Cir. 1992) (citing *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)). Jurisdiction "either exists or it does not." *Id.* (citing *UNR Industries, Inc. v. United States*, 962 F.2d 1013, 1022 (Fed. Cir. 1992)). All of the issues raised by appellant regarding the termination of the contract for convenience are premature unless a claim is first submitted to the CO. Appellant erroneously requests that the Board hear this appeal under the Board's small claims procedure, but appellant has only asserted, for the first time in his appeal, a claim for \$50,000. He has not submitted a claim to the CO for those costs referenced in the termination clause or a claim for any other amount, and the Board's small claims procedure only applies when there is a "monetary amount in dispute." See *Brent Packer v. Social Security Administration*, CBCA 5038, et al., 15-1 BCA ¶ 36,178, at 176,525 n.1.

Decision

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

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

We concur:

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge