

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
TRESP Associates, Inc. ) ASBCA No. 53702  
)  
Under Contract No. DAAK70-91-C-0074 )

APPEARANCE FOR THE APPELLANT: Ms. Lillian B. Handy  
Chief Executive Officer

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA  
Chief Trial Attorney  
CPT Peter G. Hartman, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE STEMLER

After the complaint and Rule 4 file were submitted in this appeal, the Board, *sua sponte*, raised the issue of whether it has jurisdiction over the appeal since it appears that appellant did not file a certified claim with the contracting officer. Because we find that we do not have jurisdiction, we dismiss the appeal.

FINDINGS OF FACT

1. On 26 September 1991, the Government awarded Contract No. DAAK70-91-C-0074 to TRESP Associates, Inc. (appellant) through the Small Business Administration. The contract incorporated by reference FAR 52.233-1 DISPUTES (APR 1984). (R4, tab 1)
2. Appellant submitted its revised final voucher under the contract to the Government by voucher dated 24 March 2000 (R4, tab 7).
3. By letter dated 24 May 2001 to Ms. Catherine Contreras of the Defense Logistics Agency, appellant's attorney asserted that the balance due under the contract was \$193,000 and requested Ms. Contreras to send the attorney a check in that amount payable to appellant (R4, tab 9).
4. By letter dated 20 June 2001 to Ms. Contreras, signed by appellant's controller, appellant stated that it had invoiced the Government in the amount of \$192,251.59 and that, although it had retained counsel, it would welcome the opportunity to meet with Ms. Contreras to discuss the matter. The letter did not contain a Contract Disputes Act claim certification. (R4, tab 10)

5. By letter dated 14 September 2001 to Mr. William Kelly, the contracting officer, appellant thanked the contracting officer for meeting with appellant regarding closing out the contract and again stated that the balance due under the contract was \$192,251.59 plus interest. The letter was signed by Ms. Lillian B. Handy, appellant's president and chief executive officer and did not include a Contract Disputes Act claim certification. (R4, tab 11)

6. By letter dated 29 January 2002, the contracting officer responded to appellant's 20 June 2001 letter and, *inter alia*, stated that it was the Government's position that appellant was entitled to no additional payment (R4, tab 14).

7. By letter dated 21 February 2002 to the Board, appellant stated, in relevant part:

Please accept this as a request for an appeal of the Contracting Officer's decision that TRESP Associates is not entitled to additional payment for work performed on the referenced contract. I certify that this claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which TRESP Associates believes the Government is liable; and that I am duly authorized to certify the claim on behalf of TRESP Associates.

The letter was signed by Ms. Handy, appellant's chief executive officer. (R4, tab 15)  
Appellant's appeal was docketed on 22 February 2002 (R4, tab 16).

8. On 22 April 2002, the Board held a conference call with the parties and stated that it may lack jurisdiction over this appeal because it appeared that a certified claim had not been submitted to the contracting officer. Appellant requested, and was granted, time to review its files to determine whether it had submitted a properly certified claim to the contracting officer.

9. By letter dated 17 May 2002, appellant asked the Board to consider appellant's 14 September 2001 letter to the contracting officer (*see* finding 5) to be its certified claim.

10. By letter dated 22 May 2002, the Board gave appellant 21 days to show that it submitted a certified claim to the contracting officer and stated that if a certified claim had not been submitted, the appeal was subject to dismissal without prejudice to a subsequent filing of a properly certified claim with the contracting officer.

11. By telephone on 3 June 2002, Ms. Handy informed the Board that appellant intended to submit a certified claim to the contracting officer but that it still desired a decision on the Board's jurisdiction over this appeal.

### DECISION

The contract incorporated by reference FAR 52.233-1 DISPUTES (APR 1984) which states that the contract is subject to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613. The CDA, as amended, provides, in relevant part:

For claims of more than \$100,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

(41 U.S.C. § 605(c)(1)) A "claim" for an amount over \$100,000 submitted to a contracting officer unaccompanied by any certification renders the "claim" invalid and precludes the Board from exercising jurisdiction. *Eurostyle Inc.*, ASBCA No. 45934, 94-1 BCA ¶ 26,458 at 131,654.

Neither appellant's 20 June 2001 letter nor its 14 September 2001 letter contained a CDA certification (findings 4, 5). Appellant's 21 February 2002 notice of appeal contained a CDA certification (finding 7) but that is not sufficient to turn either of the earlier letters into a valid CDA claim. The Board's jurisdiction is determined by the adequacy or sufficiency of the submission to the contracting officer, and not by the information in the notice of appeal. *Hibbitts Construction Co.*, ASBCA No. 35224, 88-1 BCA ¶ 20,505 at 103,673. Although given two opportunities to do so, appellant has not shown that it submitted a certified claim to the contracting officer (findings 8-11). Therefore, the Board lacks jurisdiction over this appeal.

### CONCLUSION

The appeal is dismissed for lack of jurisdiction without prejudice to appellant's right to submit a properly certified claim to the contracting officer.

Dated: 6 June 2002

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MARK N. STEMLER

Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur

I concur

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

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CAROL N. PARK-CONROY  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 53702, Appeal of TRESP Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals