

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
WIT Associates, Inc.) ASBCA No. 61547
)
Under Contract No. N68836-10-D-0002)

APPEARANCE FOR THE APPELLANT: Mr. Steven P. O'Carroll
CFO

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
Robert R. Kiepura, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL
ON THE GOVERNMENT'S MOTION TO DISMISS

The government moves to dismiss the appeal for lack of jurisdiction, arguing that the claim is not properly certified.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

In 2009, the government awarded a transportation services contract to WIT Associates, Inc. (R4, tab 1). In 2016, WIT's president, Eugenio Smoot, presented to the contracting officer a certified claim for \$866,051.79 (R4, tab 2 at 306). The certification, which Mr. Smoot signed, reads:

In accordance with [Federal Acquisition Regulation] 52.233-1, 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 *Guardian* believes the Government is liable; and that I am authorized to certify the claim on behalf of *Guardian*.

(R4, tab 2 at 314 (emphasis added)) WIT says that:

Guardian is the parent company of WIT. The ownership and management is one and the same.

(App. resp. at 1)

DECISION

For claims of more than \$100,000 made by a contractor, the contractor shall certify that (A) the claim is made in good faith; (B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief; (C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and (D) the certifier is authorized to certify the claim on behalf of the contractor. 41 U.S.C. § 7103(b)(1). Although that certification is a precondition to the Board's jurisdiction, a defective certification does not deprive the Board of jurisdiction, but must be corrected prior to a final judgment. *Air Services, Inc.*, ASBCA No. 59843, 15-1 BCA ¶ 36,146 at 176,426 (citing 41 U.S.C. § 7103(b)(3)). Here the certification is defective but correctable: it fails to meet at least the third and fourth attestations of a proper certification (by attempting to certify the claim in the name of, and on behalf of, an entity (Guardian) other than WIT), but meets at least the first attestation because it certifies that the claim is made in good faith.* *Cf. id.* at 176,424, 176,427 (defective certification meeting only two of the required attestations was correctable); *Western Plains Disposal*, ASBCA No. 56986, 11-1 BCA ¶ 34,617 at 170,612-13 (defective certification was correctable where it certified that "cost or pricing data...submitted...in support of [REA] are accurate, complete, and current"); *Northwest Marine, Inc.*, ASBCA No. 41702, 91-2 BCA ¶ 24,020 at 120,272-73 (claim certifier's position within contractor's parent company irrelevant to determination of adequacy of certification), *recon. denied*, 91-3 BCA ¶ 24,079 at 120,527. Accordingly, the motion to dismiss is denied, and an order requiring correction of the certification will follow.

* The government does not specifically address, and, for the moment, we do not consider, whether the challenged certification meets the second attestation.

CONCLUSION

The motion to dismiss for lack of jurisdiction is denied.

Dated: December 19, 2018



TIMOTHY P. MCILMAIL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



RICHARD SHACKLEFORD
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
Vice Chairman
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. 61547, Appeal of WIT Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals