

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Collette Contracting, Inc. ) ASBCA No. 53706  
)  
Under Contract No. F28609-00-C-0003 )

APPEARANCES FOR THE APPELLANT: Richard D. Lieberman, Esq.  
Karen R. O'Brien, Esq.  
McCarthy, Sweeney &  
Harkaway, PC  
Washington, DC

APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF  
Chief Trial Attorney  
Mark H. Alexander, Esq.  
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE FREEMAN  
ON MOTIONS TO DISMISS IN PART  
AND FOR PARTIAL SUMMARY JUDGMENT

Collette Contracting, Inc. (Collette) appeals the deemed denial of its certified claim in the amount of \$1,187,786.63 for breach of an aircraft hangar repair contract. The Government moves to dismiss paragraph 39 of the complaint for lack of jurisdiction, and for summary judgment on claimed damages for interest and lost profits. We deny the motion to dismiss and grant the motion for partial summary judgment.

Paragraph 39 of the complaint states: “On February 16, 2001, the USAF issued Amendment P00003 for additional works [sic], however this was funded from new construction funds, not renovation funds.” The Government argues that “This claim does not relate to any previous claim made by Appellant in its Certified Claim,” and therefore must be dismissed for lack of jurisdiction. (Gov’t mot. at 6-7) Government bad faith in administration of the contract was one of the allegations in the certified claim (R4, tab 130 at 17-18). Collette contends that paragraph 39 of the complaint is “part of the entire fabric of bad faith actions with which the contract was administered” (app. resp. at 2).

Collette was not required to include all supporting details in its certified claim to the contracting officer – only “adequate notice of the basis and amount of the claim.” *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987).

Collette's certified claim was submitted in a sum certain amount, and the supporting details for the allegation of bad faith breach included an alleged unjustifiable refusal to negotiate an equitable adjustment request and an alleged unjustifiable refusal to pay amounts "indisputably due." (R4, tab 130 at 1, 6, 11, 17-18, ex. 42) The details in the certified claim supporting the bad faith breach allegation were sufficient to meet the adequate notice requirement, and paragraph 39 is sufficiently related to those details and the allegation of bad faith breach as to not constitute a separate claim.

The motion for partial summary judgment is directed at the claimed damages for interest on third party financing of contract performance, and for alleged lost profits on other contracts that allegedly would have been awarded pursuant to Collette's "8(a) program goal" or otherwise, but for its loss of bonding capacity allegedly due to the Government breach. We consider this motion as one for judgment on the pleadings because, as pleaded in the complaint, the claimed interest and lost profits are not recoverable as a matter of law.

The claimed interest on third party loans is alleged in Count VII, paragraph 98 of the complaint, as a damage resulting from a material breach by the Government in failing to pay amounts due and owing. Interest on third party loans claimed as damages for Government failure to pay or delay in making payment is barred by 28 U.S.C. § 2516(a). *Ramsey v. United States*, 101 F. Supp. 353, 356-57 (Ct. Cl. 1951), *cert. denied*, 343 U.S. 977 (1952).

Collette's claimed lost profits alleged at paragraphs 52, 74, Count VIII, paragraph 100 and page 15 of the complaint, are not lost profits on the hangar contract, but on other contracts which it hoped to receive in the future. Alleged lost profits on an existing breached contract may be a question of fact. *See Energy Capital Corp. v. United States*, 302 F.3d 1314 (Fed. Cir. 2002). Collette's claimed lost profits on independent and collateral future undertakings are too speculative and remote as a matter of law to be allowed as damages of the breached contract. *See Ramsey v. United States, supra* at 357-58.

The motion to dismiss is denied. The motion for partial summary judgment denying the appeal as to the claimed damages for interest and lost profits is granted.

Dated: 17 October 2002

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MONROE E. FREEMAN, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
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. 53706, Appeal of Collette Contracting, Inc., rendered in conformance with the Board's Charter.

Dated:

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