

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Teknocraft Inc. ) ASBCA No. 55438  
 )  
Under Contract No. DAAA09-01-C-0034 )

APPEARANCE FOR THE APPELLANT: Kevin M. Cox, Esq.  
Camardo Law Firm, P.C.  
Auburn, NY

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.  
Acting Chief Trial Attorney  
CPT Robert Nelson, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE STEMLER

The government has filed a motion to dismiss on the ground that the Board lacks jurisdiction because the contractor allegedly failed to submit a valid claim certification. Appellant opposes the motion maintaining that its submission satisfies the Contract Disputes Act (CDA) requirement that the claim be certified. We hold that the Board lacks jurisdiction over the appeal.

STATEMENT OF FACTS FOR THE PURPOSES OF THE MOTION

1. On 31 July 2001, the government awarded Contract No. DAAA09-01-C-0034 to Teknocraft Incorporated (Teknocraft) to supply ammunition and explosives (R4, tabs 1, 9; am. compl. ¶ 8; answer ¶ 8).<sup>1</sup>
2. Specifically, Teknocraft was to manufacture and deliver 1,008,616 40MM, M918 Ballistic Projectile Assemblies at a price of \$7,853,084.16 (am. compl. ¶ 9; answer ¶ 9).
3. During performance of the contract, appellant alleges that the government required Teknocraft to purchase and utilize an x-ray machine for the purpose of inspecting the munitions. Appellant maintains that the required use of an x-ray machine

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<sup>1</sup> The government's answer was filed subsequent to the filing of the amended complaint.

for inspection purposes is a change to the contract. The government denies that it required the contractor to purchase an x-ray machine. (Am. compl. ¶¶ 23-25; answer ¶¶ 23-25)

4. By correspondence<sup>2</sup> dated 14 March 2006, the contractor submitted a claim (on appellant's letterhead) for \$284,992. Accompanying Teknecraft's claim was its "certification of claim." The certification read as follows:

I hereby certify that the 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 the contractor believes the government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

//signed//

Sam Kumar  
President  
Teknecraft, Inc.

Neither the certification (nor the letter) were signed by the traditional pen and ink method, but instead by the typed word "signed." (R4, tab 80)

5. During contract performance, the parties used email (among other means) to correspond (R4, tabs 8, 10, 28, 52, 72). Further, both personnel for Teknecraft and the government used the typed designation "//signed//" in their respective emails (R4, tabs 8, 10, 12, 14, 20, 28, 52, 72). While appellant states that the claim and certification were sent via email (app. opp'n at 1), appellant has not alleged nor provided evidence that the certification was digitally, or electronically signed such that the certification signature could be authenticated.

6. On 24 September 2007, the Board ordered the government to provide a copy of R4, tab 80 (the claim) with a signed certification.

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<sup>2</sup> Appellant's 20 February 2008 reply to the motion to dismiss informs us that the letter was sent via email to the contracting officer (app. opp'n at 1). There is no allegation that the "signature" described below qualifies under, or was intended to qualify under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, *et seq.*

7. On 29 October 2007, the government reported that it did not have a signed copy of the certification in its files.

8. On 31 October 2007, the Board directed appellant to submit a copy of the signed certification submitted with the claim of 14 March 2006, or explain why the copy of the certification in the Board's Rule 4 file complies with the CDA. Appellant's 19 December 2007 reply to the Board's order maintained "that the certification was properly executed since it was sent on company letterhead, from an individual with authority to bind the corporation, and marked with the word '//signed//' below his name."<sup>3</sup> Appellant alleged that its actions met the requirement of Federal Acquisition Regulation (FAR) 33.207(e) that the certification be "executed." Appellant stated that if its certification was held to be defective, it would submit a signed certification in accordance with FAR 33.207. On 24 January 2008, the government filed an opposition to appellant's response to the Board's show cause order and motion to dismiss for lack of jurisdiction. The government surmised that: "[a]ppellant's failure to sign its attempted claim certification renders the claim uncertified. Because this constitutes an un-curable defect, the Board lacks jurisdiction over this appeal ...." (Gov't mot. at 1) On 20 February 2008, appellant filed an opposition to the motion arguing that there is no "failure to sign" which would render the certification non-curable as "[a]ppellant signed the claim certification (i.e. "//signed//") above his printed name ...." Appellant offered that the designation "//signed//" was, at most, a curable defect which could be corrected anytime prior to entry of a final judgment of this Board. (App. opp'n at 2-3)

### DECISION

The CDA, 41 U.S.C. § 605(c)(1), provides in pertinent 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.

FAR 33.207 has interpreted this statutory provision to require that the certification be "executed" by an appropriate duly authorized representative of the contractor. The Board has interpreted the requirement to execute the certification of a claim as obligating

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<sup>3</sup> While "//signed//" can be an indication that the document does exist with a pen and ink signature, that is not the case here.

the certifier to sign the claim certification. *Hawaii CyberSpace*, ASBCA No. 54065, 04-1 BCA ¶ 32,455 at 160,535.

In determining whether a certification is properly executed or signed, we apply the FAR's definition of "signature." FAR 2.101 defines signature as "the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols." FAR 2.101. In the certification at issue in this appeal, the generic typewritten notation, "//signed//" is not a discrete, verifiable symbol. It is not a unique signature. The generic notation is not sufficiently distinguishable to authenticate that the certification was issued with Mr. Kumar's knowledge and consent or establish his intent to certify. Therefore, the certification was not properly executed as it was not signed.

Appellant maintains that *Hawaii CyberSpace* is not controlling. In *Hawaii CyberSpace* the certification was void of a signature. It is appellant's argument that its certification is not void of a signature as "//signed//" is placed in the signature block above the certifier's typewritten name. However, as we stated above, "//signed//" is not a signature. The indefinite generic notation is fundamentally indistinguishable from the situation where the certification is unsigned. In either case, the requisite intent, consent and authentication of the certification is lacking. Therefore, *Hawaii CyberSpace* is controlling.

We also disagree with the view that "//signed//" in the signature block is, at most, a correctable defect to an otherwise proper certification. While a defect in the certification does not deprive an agency board of contract appeals of jurisdiction over a claim, 41 U.S.C. § 605(c)(6), we have held, in *Hawaii CyberSpace*, that "the failure to sign is . . . akin to a "failure to certify." *Hawaii CyberSpace*, 04-1 BCA at 160,535. Further, we believe that the notation, "//signed//" is tantamount to being void of a signature, a fatal defect. The computer generated nonspecific notation is not a discrete, verifiable symbol which can be authenticated. As we discussed in *Hawaii CyberSpace*, citing *Youngdale & Sons Construction Co. v. United States*, 27 Fed. Cl. 516, 561, n.87 (1993), the necessity to sign the certification is to hold the signer "accountable for any falsities contained therein." Without a signature, the purported author of the certification could just as easily disavow the certification because "//signed//" cannot be authenticated. Proper execution of the certification is fundamental, going to the essence of the requirement.

CONCLUSION

For the reasons stated above, the government's motion to dismiss is granted, and the appeal is dismissed without prejudice.

Dated: 3 April 2008

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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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ROBERT T. PEACOCK  
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. 55438, Appeal of Teknocrat Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals