

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
Taj Al Safa Company ) ASBCA No. 58394  
Under Contract No. M68450-08-M-0836 )

APPEARANCE FOR THE APPELLANT: Mr. Murtada J. Abd-Alsaheb  
Direct Managing Officer

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
CPT Michael E. Barnicle, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MELNICK  
DISMISSING THE APPEAL FOR LACK OF JURISDICTION

Appellant, Taj Al Safa Company, filed a notice of appeal seeking compensation arising from a contract it executed in Iraq. Because the claim exceeds \$100,000, but is not certified under the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, we must dismiss for lack of jurisdiction.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

On 12 September 2008, the Joint Contracting Command Iraq/Afghanistan entered into a contract with Taj Al Safa Company (Taj Al Safa) for ablution and water removal services in Iraq (R4, tab 1). In 2009, Taj Al Safa engaged in a series of email exchanges with the contracting officer (CO). In those exchanges, the CO referred to Taj Al Safa making a demand for \$551,000. That email series was later included by Taj Al Safa in a 2012 series of exchanges about its demand with a second CO. (R4, tab 2) The second CO issued a final decision on 12 September 2012, denying Taj Al Safa's claim for \$551,000 (R4, tab 3). Taj Al Safa engaged in some additional email communication with the CO in October of 2012. At one point, it asserted entitlement to \$600,000, and at another point it sought at least \$537,000 (R4, tab 4). The CO reiterated her denial of its claims in emails dated 21 and 30 November 2012 (R4, tabs 5-6).

On 8 November 2012, Taj Al Safa emailed a notice of appeal to the Civilian Board of Contract Appeals. On 21 November 2012, it emailed a copy of that notice to this Board, which docketed the appeal on 26 November. In its docketing notice, the Board inquired into whether Taj Al Safa had submitted a claim to the CO. The Board, therefore, suspended proceedings pending clarification of that issue. The government

subsequently filed a motion to dismiss, asserting that Taj Al Safa's claim exceeded \$100,000, but was not the subject of a CDA certification. Taj Al Safa's response provided copies of various invoices, but no certification.

### DECISION

Under the CDA, our jurisdiction is dependent upon whether Taj Al Safa submitted a written claim to the CO for a decision, followed by a decision or deemed denial. 41 U.S.C. §§ 7103-7105. Additionally, to the extent the claim exceeds \$100,000, Taj Al Safa was required to certify that the claim was made in good faith, the supporting data were accurate and complete to the best of its knowledge and belief, the amount requested accurately reflected the contract adjustment for which it believed the Federal Government was liable, and the certifier was authorized. 41 U.S.C. § 7103(b); *Engineered Demolition, Inc.*, ASBCA No. 54924, 06-1 BCA ¶ 33,125 at 164,151; *Southern Automotive Wholesalers, Inc.*, ASBCA No. 53671, 03-1 BCA ¶ 32,158 at 158,998. A defective certification does not deprive us of jurisdiction, though it must be corrected before we issue a decision. 41 U.S.C. § 7103(b)(3); *Western Plains Disposal*, ASBCA No. 56986, 11-1 BCA ¶ 34,617 at 170,613. However, the "complete absence of certification is not a jurisdictional defect that can be corrected after an appeal has been taken," and therefore would dictate dismissal. *Tefirom Insaat Enerji Sanayi ve Ticaret A.S.*, ASBCA No. 56667, 11-1 BCA ¶ 34,628 at 170,630.

It is well established that the CDA does not define the term claim. However, FAR 2.101 (2008), which applied at the time of contracting, defined a claim as "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." It adds that a demand seeking the payment of money exceeding \$100,000 is not a claim until certified. We apply a common sense analysis to determining whether a contractor's communication constitutes a claim, and look for a "clear and unequivocal statement that gives the [contracting officer] adequate notice of the basis and amount of the claim." *Todd Pacific Shipyards Corp.*, ASBCA No. 55126, 06-2 BCA ¶ 33,421 at 165,687. That analysis can also be influenced by whether the government treated the submission as a claim. *Transamerica Ins. Corp. v. United States*, 973 F.2d 1572, 1579 n.2 (Fed. Cir. 1992) ("The fact that the Government referred to the operative submission(s) as 'claims' was found persuasive by this court in its *Contract Cleaning* analysis."); *Contract Cleaning Maint., Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987) ("Indeed, GSA itself viewed the...letter as a 'claim,' since...it stated that the 'claim is still under consideration and final decision has not been made.'").

Here, it is questionable whether the first two sets of email exchanges actually reflect a written demand by Taj Al Safa for \$551,000. The references to that sum are all made by government personnel. However, the government considered the exchange to

constitute such a claim, and issued a final decision denying it. Subsequent emails do reflect demands by Taj Al Safa for \$600,000 and \$537,000. However, no certification has been provided for any of the amounts at issue. That absence is clearly fatal to our jurisdiction over this appeal.

CONCLUSION

The appeal is dismissed for lack of jurisdiction. Taj Al Safa Company may submit a claim in a sum certain amount to the CO and must include a CDA certification with that claim if it exceeds \$100,000. If it does not agree with the CO's decision on this claim, it may file a timely appeal to this Board within 90 days of receipt of the decision or within one year of receipt of the decision to the U.S. Court of Federal Claims.

Dated: 1 April 2013



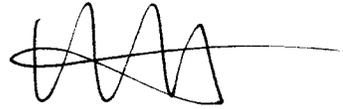
MARK A. MELNICK  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



RICHARD SHACKLEFORD  
Administrative Judge  
Acting 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. 58394, Appeal of Taj Al Safa Company, rendered in conformance with the Board's Charter.

Dated:

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