

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of - )  
 )  
 ) ASBCA No. 62870  
 )  
 Under Contract No. W5J9JE-16-P-0011 )

APPEARANCE FOR THE APPELLANT: Mr. [REDACTED]  
Director  
[REDACTED]

APPEARANCES FOR THE GOVERNMENT: Michael P. Goodman, Esq.  
Engineer Chief Trial Attorney  
Kathryn G. Morris, Esq.  
James D. Stephens, Esq.  
Engineer Trial Attorneys  
U.S. Army Engineer District, Middle East  
Winchester, VA

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

The government moves to dismiss the appeal for lack of jurisdiction because, the government says, appellant, [REDACTED], never submitted a properly certified claim to a contracting officer requesting a final decision pursuant to the Contracts Disputes Act, 41 U.S.C. §§ 7101-7109 (CDA) (gov’t mot. at 1). [REDACTED] [REDACTED] response to the motion does not address the government’s position (app. resp. at 1).

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

On February 24, 2016, the government contracted with [REDACTED] for work including repair and replacement of interior plumbing systems and ceramic tile at the Afghan Air Force Base at Hamid Karzai International Airport, Kabul, Afghanistan (R4, tab 3 at 1, 59 ¶ 1). On December 12, 2019, [REDACTED] submitted what it called an “REA” (presumably, a Request for Equitable Adjustment) seeking, we find,

\$104,390\* (R4, tab 29 at 1, 5, 9, 14). No certification of any kind accompanies that request (*see id.*).

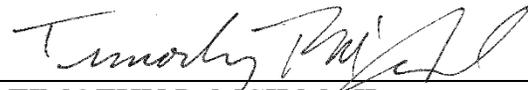
### DECISION

██████████ has the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). The CDA provides that each “claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.” *Andrews Contracting Servs., LLC*, ASBCA No. 60808, 17-1 BCA ¶ 36,766 at 179,168 (citing 41 U.S.C. § 7103(a)(1)). The linchpin of the Board’s jurisdiction over a contractor claim is the contractor’s submission of a proper claim to the contracting officer for a decision. *Id.* Although the CDA does not define the term “claim,” the Federal Acquisition Regulations (FAR) define 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.” FAR 2.101. In addition, a claim exceeding \$100,000 must be certified in accordance with 41 U.S.C. § 7103(b). We determine whether a contractor’s submission is a CDA claim on a case-by-case basis, applying a common sense analysis. *Andrews Contracting*, 17-1 BCA ¶ 36,766 at 179,168. ██████████ point us to nothing in the record that constitutes a proper, certified CDA claim conferring upon us jurisdiction to entertain ██████████ request for more than \$100,000, nor do we see anything in the uncertified, December 12, 2019 REA that confers upon us that jurisdiction. Consequently, the motion to dismiss is granted, and the appeal is dismissed for lack of jurisdiction.

### CONCLUSION

The motion to dismiss is granted, and the appeal is dismissed for lack of jurisdiction.

Dated: September 14, 2021



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

(Signatures Continued)

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\* \$23,530 + \$1,900 + \$78,960 = \$104,390. In a document dated September 26, 2016, but filed with the Board on April 10, 2021, ██████████ “look[s] to get the amount of 103430 USD” from this appeal.

I concur



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

I concur



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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. 62870, Appeal of [REDACTED], rendered in conformance with the Board's Charter.

Dated: September 16, 2021



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PAULLA K. GATES-LEWIS  
Recorder, Armed Services  
Board of Contract Appeals