

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Godwin Equipment, Inc.) ASBCA No. 53462
)
Under Contract Nos. M67004-95-D-0011)
M67004-95-D-0012)

APPEARANCE FOR THE APPELLANT: Peter E. Moye, Esq.
Workland and Witherspoon, PLLC
Spokane, WA

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
Robert C. Ashpole, Jr., Esq.
Senior Trial Attorney

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

The Government moves to dismiss for lack of jurisdiction alleging that appellant’s claim fails to state a “sum certain.” Appellant did not reply to the Government’s motion. The subject appeal arises under the same contracts as ASBCA No. 51939. *See Godwin Equipment, Inc.*, ASBCA No. 51939, 01-1 BCA ¶ 31,221 (Government’s motion for summary judgment and motion to dismiss for lack of jurisdiction and mootness granted in part and denied in part).

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

On 30 August 2000, appellant submitted a claim to the contracting officer for breach of contract resulting from the Government’s alleged failure to deliver parts ordered from the Department of Defense (DoD) Supply System in a timely manner. As a result of these delays, appellant claimed that it had been damaged “in excess of [\$]5,000,000.00.” Appellant appeals from a denial of the claim. The Government moves to dismiss asserting that “in excess of [\$]5,000,000.00” is not a claim for a sum certain.

DECISION

Under the Contract Disputes Act of 1978 (CDA) and its implementing regulations, a claim submitted to the contracting officer for the payment of money must be in a sum certain. 41 U.S.C. § 605(a); FAR § 33.201; *Essex Electro Engineers, Inc. v. United States*,

960 F.2d 1576, 1581-82 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 953 (1992). In the past, we have held that claims for “in excess of” a specified amount do not satisfy the requirement for a sum certain. *Corbett Technology Company, Inc.*, 95-1 BCA ¶ 27,587 at 137,471 (a claim for “in excess of \$35,000.00” did not state a sum certain under the CDA); *Rohr, Inc.*, ASBCA No. 44773, 93-2 BCA ¶ 25,787 at 128,315 (a claim for “an unspecified amount but anticipated to be in excess of Forty Million Dollars (\$40,000,000.00)” did not state a sum certain). *See also Metric Construction Co. v. United States*, 14 Cl. Ct. 177, 179 (1988) (a claim for amounts exceeding \$91,000 and \$7,500 did not satisfy the requirement for a sum certain). In this case, appellant claimed “damages in excess of [\$]5,000,000.00.” Under our previous rulings, this is inadequate to meet the CDA requirement for a sum certain.

Accordingly, the appeal is dismissed without prejudice to the filing of a proper claim in a sum certain.

Dated: 10 December 2001

ELIZABETH A. TUNKS
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

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. 53462, Appeal of Godwin Equipment, Inc., rendered in conformance with the Board's Charter.

Dated:

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