

MUST YOUR CLAIM BE CERTIFIED BY THE PERSON WHO SIGNED YOUR CONTRACT?

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The Civilian Board of Contract Appeals (“CBCA”) recently set forth the requirements for a person who signs a contractor’s certification of its claim. *AMX Veterans Spec. Servs., LLC v. Dept of Veterans Affairs*, CBCA 5180, August 9, 2016. As readers of this blog know, any claim over \$100,000 must be certified stating that:

- the claim is made in good faith,
- the supporting data are accurate and complete to the best of the contractor’s knowledge and belief
- the amount requested accurately reflects the amount the government owes
- the certifier is authorized to certify the claim on behalf of the contractor.

41 U.S.C. §7103(b). The Federal Acquisition Regulation (“FAR”) states that for requests over \$100,000, whatever the contractor submits “is not a claim...until certified as required by the statute.” FAR 2.101. In *AMX*, the Department of Veterans Affairs (“VA”) moved to dismiss *AMX*’s appeal, asserting that the contractor’s claim was signed by a person who *did not* sign the contract, and for whom the state reports did not identify as a manager of the company. The VA asserted that this lack of certification deprived the Board of jurisdiction, and the appeal had to be dismissed. The CBCA disagreed with the VA and held that the claim was validly signed.

The Board noted that the Chief Operations Officer (“COO”) of *AMX*, Mr. Anthony Edes, had signed the claim certification, and included the statement that he was duly authorized to certify the claim. Mr. Edes was the COO, and the Articles of Organization of *AMX* granted the COO authority to execute bonds, deeds and contracts, as well as “such other duties and responsibilities as are customarily possessed by the COO of a corporation similar in size.” The Board also noted that Mr. Edes, as COO, had signed all nine of *AMX*’s bilateral modifications, a settlement agreement and a termination for convenience settlement proposal.

The CBCA held that Mr. Edes had both actual and apparent authority to bind *AMX* and the certification was proper. His actual authority was included in *AMX*’s Articles of Organization which granted the COO such authority. Mr. Edes had apparent authority because his signature on the modifications and settlement documents created the reasonable belief that he was authorized to sign documents for *AMX*, and because the Veterans Administration had accepted as binding his signature on contractual documents throughout the contract.

Finally, the Board noted that even if Mr. Edes’s did not have authority to certify *AMX*’s claim, his “defective” signature would *not* have deprived the Board of jurisdiction. Rather, according to the Contract Disputes Act, the certification would be considered defective, and could be corrected by *AMX* prior to the entry of final judgment. 41 U.S.C. § 7103(b)(3), FAR 33.207(f).

The simple answer is that a claim over \$100,000 can be signed and certified by anyone possessing proper authority to do so. The person need not have signed the contract, but the

company submitting the claim bears the burden of establishing, through the corporate documents or otherwise, that the signer has authority to bind the company. AMX clearly met that burden.