

## **FINAL CONTRACTING OFFICER DECISION ON CLAIM DOES NOT CURE LACK OF CERTIFICATION**

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The Civilian Board of Contract Appeals reinforced the statutory and regulatory framework for claims over \$100,000 that lack certification when submitted to the Contracting Officer. Such claims are not proper “claims” under the Contract Disputes Act, and may be dismissed by either a contracting officer or a Board or Court. *Computer Integration & Prog. Sol. Corp.*, CBCA 6491, June 7, 2019. The issue was recently discussed in two recent blogs, “Defective Claim Certification or No Claim Certification” (Nov. 20, 2018) and “Correctible (Defective) Claim Certification” (March 5, 2019). It is essential for contractors to understand that every claim over \$100,000 must be certified to the Contracting Officer. Even if the certification requires correction, it can be corrected, but the total absence of a certification is fatal.

The Contract Disputes Act of 1978, codified at 41 U.S.C. § 7103 requires that all claims of more than \$100,000 be certified, and meet other requirements as set forth below in the statute:

### **(b) CERTIFICATION OF CLAIMS.—**

**(1) REQUIREMENT GENERALLY.—**For claims of more than \$100,000 made by a contractor, the contractor shall certify that—

- (A)** the claim is made in good faith;
- (B)** the supporting data are accurate and complete to the best of the contractor’s knowledge and belief;
- (C)** the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and
- (D)** the certifier is authorized to certify the claim on behalf of the contractor.

### **(2) WHO MAY EXECUTE CERTIFICATION.—**

The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

### **(3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—**

A contracting officer is not obligated to render a final decision on a claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected....

The Federal Acquisition Regulation (“FAR”) provides the specific language for contractors to use for their certification:

I 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.

FAR 33.207(c). The FAR also states that a “defective certification” means “a certificate which alters or otherwise deviates from the language in FAR 33.207(c) or which is not executed by a person authorized to bind the contractor with respect to the claim. *Failure to certify shall not be deemed to be a defective certification.*” FAR 33.201 (emphasis added).

In *Computer Integration*, the contractor sought to recover more than \$100,000 in its claim. The contracting officer issued a decision denying the claim in part. However, the claim completely lacked certification—it did not even contain a defective certification. When the appeal came before the Civilian Board, it was dismissed for lack of jurisdiction, even though the contractor, upon making the appeal, provided a certification of its claim.

In dismissing the appeal, the board noted that the statute makes no “correction” available when no certification is provided to the contracting officer, and the “certification requirement rests on the contractor; [the fact] that the contracting officer [acted on the claim] and failed to specify that a certification was lacking does not create jurisdiction here.”

Takeaway. Always certify claims over \$100,000 when submitting them to the contracting officer. If your certification is defective, you can correct it later. If the certification is not submitted to the contracting officer, it is not a “claim” under the Contract Disputes Act and will be dismissed.

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