

CONTRACTING OFFICER’S CLAIM WAS NOT “FINAL DECISION” BECAUSE IT INVITED CONTRACTOR TO SUBMIT FACTS AND DOCUMENTATION BEFORE FINAL DECISION

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The linchpin for appealing claims under the Contract Disputes Act is a Contracting Officer’s final decision and a contractor may not appeal to the agency board or the Court of Federal Claims without such a decision. 41 U.S.C. §§7104, 7105. The same rule applies to both contractor claims and government claims. But an issue sometimes arises over whether a decision is a “final decision” which is appealable, and an interim decision, which is not. *4K Global-ACC JV, LLC v. Dept of Labor (“4K Global”)*, CBCA 7392, July 29, 2022 is a good example of an analysis discussing final and interim decisions.

On March 23, 2022, 4K Global received a letter whereby the Dept. of Labor (“DOL”) asserted a government claim against the contractor of \$5.6 million, representing the damages the government had incurred “to date” as a result of 4K Global’s default of the contract. The government “Claim for Default Termination Damages” letter included the following statements:

DOL requests that you provide any facts, documentation or argument that you believe is relevant to this Government claim, and that you do so within 30 days of your receipt of this letter. DOL will consider your response before issuing its final decision.

[The letter did not contain a statement of any 4KGlobal appeal rights under the Contract Disputes Act]

4KGlobal appealed the March 23, 2022 letter and the Civilian Board of Contract Appeals (“CBCA”) examined whether or not this was a final, appealable decision of the agency. The Board examined several cases on this, including *Placeway Const. Co. v. United States*, 920 F.2d 903 (Fed. Cir. 1990) and *Sharman Co. v. United States*, 2 F.3d 1564 (Fed. Cir. 1993), in making its ruling.

The Board held that the request for facts, documents or argument contained in the DOL letter made it clear that the DOL intended to issue a final decision *after* receiving 4K Global’s response. This language indicated that the March 23, 2022 letter was a “tentative determination” issued to invite a contractor to comment, rather than a final decision. The CBCA found this letter to be “only an initial step in [the claim] process,” consistent with FAR Part 33.2. Therefore, the CBCA dismissed 4K Global’s appeal for lack of jurisdiction because there had been no final decision on government claim.

Takeaway. If an agency files an agency claim with the contractor, but invites the contractor to comment prior to issuing a final decision, the initial filing will be considered “not appealable” until the final decision is issued by the contracting officer.

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