

NOT A CLAIM

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Contractors should use caution when submitting an appeal to a Board of Contract Appeals or the Court of Federal Claims. Contractors must ensure that there is an underlying claim, pursuant to the Contract Disputes Act (“CDA”) that they can appeal. One recent contractor was out of luck at the Civilian Board when it failed to submit a proper claim. *Rapid Temps, Inc. v. Department of Veterans Affairs*, CBCA 6703, June 19, 2020.

Before discussing the case, here’s a review of the definition of claim in the FAR, and its elements:

FAR 2.101. *Claim* means 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. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71, Contract Disputes, until certified as required by the statute. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

Therefore, a proper Contract Disputes Act claim must include the following elements:

1. A demand for payment;
2. Be submitted in writing;
3. Be submitted to the Contracting Officer (not to a representative such as the Contracting Officer Representative (COR) or Contracting Officer Technical Representative (COTR) or Contract Specialist);
4. A statement that it seeks as a matter of right--
the payment of money in a sum certain (a definite amount) or the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract;
5. A statement that it requests a final decision from the Contracting Officer.

In addition to the procedural formalities listed above, a claim to the government must also include sufficient detail to allow the contracting officer to know what is being claimed and why. The CDA also requires that claimants certify any claim demanding payment *in excess of \$100,000*. The claimant must certify that the claim is submitted in good faith and there is sufficient data in support. Failure to provide a proper certification can lead to the dismissal of a claim.

Rapid Temps had a services contract with the VA, and held a task order. The contractor received from the contracting officer a letter stating that two invoices that had been submitted as routine

payment requests under the task order would not be paid. The invoices were for services of a computer technician who had performed on site, but payment was rejected by the VA because allegedly the services provided were not within the scope of the contract, rather the person merely received training from VA staff.

Rapid Temps emailed the government and asked if there was another level of dispute, and the contracting officer referred the company to FAR 1.602-3(d) which deals with “ratification of unauthorized commitments.” Two months later, the appellant wrote to the contracting officer “seeking assistances with the rejection of two invoices” and requesting “an avenue of disputing this rejection.” The contracting officer forwarded the Rapid Temps sender a copy of the previous letter which referenced FAR 1.602-3(d). Approximately one month later, Rapid Temps submitted an appeal to the Civilian Board “appealing the decision by the Contracting Officer ...rejecting payment [for two invoices]” and attaching the letter denying the payment of the invoices.

The Board took less than one page in dismissing the Rapid Temps’ appeal for lack of jurisdiction, because the contractor had never filed an underlying claim, which a prerequisite for Board jurisdiction. The Board identified the requirements that a contractor must satisfy in order to submit a proper claim (see above). The CBCA then noted that the two invoices were not claims (they were routine requests for payment, and the contracting officer’s letter denying payment was not an appealable decision on a claim.) Finally, when Rapid Temps asked for clarification of the reasons for rejection, the contractor did not request a “sum certain” or a final decision from the contracting officer—and this was not a claim.

When Rapid Temps submitted its appeal, it had submitted neither a claim nor received an appealable decision from the contracting officer. Therefore the Board had no jurisdiction and dismissed the claim.

Takeaway. Do not appeal “routine” requests for payment. Make a written demand for payment which you believe have been denied, under the disputes clause of your contract. When denied by the contracting officer, this becomes a decision that will form the basis of a proper claim. Also, be sure you get advice on government contracting issues, such as claims, from a qualified, non-government person, such as an experienced government contracts consultant or government contracts counsel.

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