

## INVALID “FINAL DECISION”

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Does the absence of a required claim render a Contracting Officer’s (“CO”) “final” decision invalid?. The answer is simple, such a document isn’t a “Final Decision” on a claim by a Contracting Officer, as contemplated by the Contract Disputes Act. *The Povolny Group, Inc. v. Dept of Veterans Affairs*, CBCA 8160 (Oct. 16, 2024). And, the Civilian Board held that the absence of a claim means that the Board lacked the jurisdiction to process an appeal of that “claim.”

The Department of Veterans Affairs (“VA”) awarded Povolny a contract to renovate the atrium of a VA medical center. Povolny submitted a Request for Information (“RFI”) asking for a change in the specifications, but the VA CO did not approve the request. Povolny completed the project using the revised specifications in the RFI, and requested approval of the CO. On May 8, 2024, the VA CO issued a “final decision” which included “options” for resolving the issues raised by Povolny. Povolny timely appealed this “final decision,” but stated that this was a protective appeal and the appeal should be dismissed because Povolny had not filed an actual claim. The CO refused to retract her “final decision” even though Povolny had requested that it be retracted.

The Board stated that the issue in this appeal was whether it had jurisdiction to hear this appeal, since Povolny did not submit a claim to the CO. The Contract Disputes Act provides that each claim by a contractor against the federal government shall be submitted to the CO for a decision. The FAR defines a claim as follows:

Claim means a written demand or written assertion by one of the contracting parties seeing, as a matter or right [money or adjustment in contract terms or other relief].

FAR 2.101(b)(2)

The Board noted that a contractor’s claim submission is a prerequisite for a CO’s final decision and the Board can only exercise jurisdiction over an appeal after the claim is submitted to the CO and the CO either renders a final decision on the claim or the claim is deemed denied. The Contract Disputes Act denies the contracting officer the authority to issue a decision on a contractor’s request for monetary compensation until a contractor’s claim in writing has been properly submitted to the CO for a decision.

The Board held that since no claim was made, there was no jurisdiction at the Board, even though the contracting officer mistakenly issued a what the CO asserted was a “final decision.”

Takeaway. Be sure you submit a claim when and if warranted, and your CO issues a final decision (or your claim is deemed denied); only then can you file an appeal. The contractor in this case protected itself from an invalid “final decision.” The CO should have waited for the contractor’s claim and then ruled on it as required by the FAR.

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