

## **SUM CERTAIN NEEDED FOR A GOVERNMENT CLAIM**

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In the Federal Acquisition Regulation a “claim” is defined as 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 this contract.” FAR 2.101; *see also id.* FAR 52.233-1(c) (government contract disputes clause defining a claim). This blog has frequently explained the importance of a contractor’s claim to present a “sum certain” if it is a monetary claim. The same requirement applies to a government claim. *Crystal Clear Maintenance v. General Services Admin*, CBCA 7547, April 13, 2023.

Crystal Clear had a contract for maintenance for the Little Rock Bankruptcy Courthouse building. On July 6, 2021, GSA issued a contracting officer’s final decision and demand for payment regarding GSA’s claim for the costs of water repair intrusion damage cause by Crystal Clear’s alleged negligent performance of its maintenance contract. The claim stated “as of the date of this letter, the total cost of damage continues to be assessed, but is *currently a minimum of \$173,978.19*” (*emphasis added*). On October 13, 2022, GSA issued an “*Updated Demand for Payment*” to Crystal Clear referencing the previous letter and asserting that the total cost of the repairs owed to GSA was \$741,797.50, which included the previous amount in the GSA’s July 6, 2021 letter.

On October 21, 2022, Crystal Clear filed its appeal of GSA’s claim. To possess jurisdiction, the Board noted that the claim must be valid (meet the requirements) and have a final contracting officer’s decision. The Board also noted that a “sum certain” must be readily ascertainable either by a stated amount or a simple mathematical calculation. Just as in a contractor claim, a government claim may not use qualifying phrases, such as “of a minimum” or “not less than” to describe the amount claimed. Use of such phrases does not satisfy the sum certain requirement.

GSA moved to dismiss the claim alleging that it was not filed within 90 days of the July 6, 2021 contracting officer’s final decision, as required by 41 U.S.C. §. 7104(a). However, the Board noted that the July 6<sup>th</sup> GSA letter failed to satisfy the sum certain requirement since it qualified the amount by saying “at a minimum of”. Therefore, Crystal Clear’s 90 days to appeal did not begin until the second GSA letter, on October 13, 2022. The appeal was therefore timely and the Board denied GSA’s motion to dismiss for lack of jurisdiction.

Takeaway. Contractors must ensure that a monetary claim either states a “sum certain” or the amount of the claim is readily ascertainable (such as embodied in a previous document that the parties have exchanged such as a previous invoice). The same requirement exists for a government claim. A contracting officer’s final decision, or a deemed denial must be appealed within 90 days of receipt—and the same applies to a final decision on a government (contracting officer’s) claim.

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