

A REALLY BAD GOVERNMENT CLAIM BY A CONTRACTING OFFICER

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Many government contract professionals think of “claims” as something that only contractors submit, but the Contract Disputes Act (“CDA”) provides for claims by the government as well as contractor claims. And, as shown below, the government is held to the same standard in proving a claim. *Crystal Clear Maintenance v. General Services Admin.*, CBCA 7457, March 24, 2025.

In the *Crystal Clear* case, the contractor appealed a General Services Administration (“GSA”) claim for costs to repair flood damage allegedly caused by Crystal Clear’s failure to perform aspects of its maintenance contract for the Little Rock, AR courthouse building and four other buildings around Little Rock. The claim arose because of a flood that took place in the courthouse.

The contracting officer issued two claim letters to Crystal Clear, the first demanding \$174,000 for payment for certain repair costs, first asserting that the contractor had failed to test the freeze sensor prior to predicted cold weather and also, failed to have personnel on-site during a cold weather incident. Four months later the contracting officer issued an “updated demand for payment” that reasserted the \$174,000 claim, and a new claim for \$568,000 for costs incurred to repair damaged portions of the building. Surprisingly, the appeal file submitted by GSA failed to contain the purchase and task orders on which the costs in both demand letters were incurred, or any supporting cost information.

The Board’s opinion noted that in a government claim, the government bears the burden to prove liability, causation and resultant damages.

Liability: With regard to liability, GSA asserted that the contractor should have alerted GSA that the freeze sensor had been moved, and contractor personnel should have been on site to prevent the floor. However, the Board found that the contract provided for contractor to be onsite during normal working hours, and further that the contractor is charged with responding to floods, not preventing them. The contractor met its obligation to respond within an hour when it was notified of the floor—thus GSA failed to establish liability with this allegation.

Causation: GSA failed to establish causation, by failing to prove by the preponderance of evidence that damage from the burst pipe was “caused in whole or in part” by the contractor’s negligence.

Damages: GSA failed to prove damages because there was no proof that the amounts sought were correct. Instead, GSA offered to provide damages *after* the Board decided the issue of entitlement. The record contained no proof of damages.

Finally, GSA’s assertion that the contractor failed in its obligation to notify GSA during the first fifteen months of a problem with the flood sensor. The Board found that GSA was required to conduct an inspection to ensure all equipment was in place and in working order, but the Board could find nothing in the record showing if this initial inspection by GSA had been performed. There was no basis for contractor liability since both the government and contractor had an equal obligation to inspect.

Takeaway. Contracting officers share the same burden as contractors to prove liability, causation, and resultant damages for any claim they make against a contractor. GSA’s claim here

failed in every respect. This claim should have been reviewed much more carefully before the demand letter were sent.

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