NO MAGIC WORDS OR FORM NEEDED FOR A CLAIM

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In an interesting reversal, the Federal Circuit reversed and remanded an Armed Services Board of Contract Appeals ("ASBCA" or "Board") case dealing with the acceptable wording and format of a claim under the Contract Disputes Act. *Hejran Hejrat Co., Ltd, v. United States Army Corps of Engineers,* 930 F. 3d 1354 (Fed. Cir. 2019). See *Hejran Hejrat Co, Ltd,* ASBCA No. 61234, 18-1 BCA ¶ 37039 for the Board Decision. Although the ASBCA dismissed the appeal based on lack of jurisdiction because the contractor never explicitly asked for a final decision of the contracting officer, the Federal Circuit held that, notwithstanding the lack of an explicit request for the final decision, and notwithstanding the fact that the "claim" was styled as an "REA" (request for equitable adjustment), it still qualified as a claim under the Contract Disputes Act.

Hejran had a contract to provide transportation services in Afghanistan and advised the contracting officer that it had incurred additional costs as a result of delays and changes in the contract price by the government. The contractor made several preliminary submissions of invoices requesting additional compensation, and finally, on March 5, 2015, submitted a document entitled "Request for Equitable Adjustment (REA)" including a (defective) certification of the amount requested. On March 26, 2017, in what the contracting officer stated was the "final determination in this matter," the claim was denied. Upon appeal, the Board concluded it did not have jurisdiction because the contractor never requested a final contracting officer's decision.

The Court noted that in order to constitute a claim, a contractor must request a final decision by a contracting officer, however there are no magic words or special form needed to make the submission a "claim." Hejran's March 5th submission was a written demand, seeking as a matter of right, the payment of money in a sum certain, and the specific grounds for that payment.

The Government's arguments and the Court's holdings were as follows:

1) Hejran's March 5th submission is styled as an REA not as a Claim.

> Court: Our cases show that an REA, that satisfies all the requirements for a claim, is a claim. This was a claim.

2) Hejran's March 5th submission fails to include any language requesting a final decision.

> Court: Our caselaw recognizes that a claim need not be submitted in any particular form or use any particular wording, as long as it contains a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim.

3) Hejran's March 5th submission stated that its submissions did not constitute a request for a final decision.

> Court: Although earlier submissions did not contain such a request, the March 5th submission provided a sworn certification of its claim, and the contracting officer had issued a "final determination" in the matter, and could not retroactively deny it was a claim

The Court concluded that the March 5th submission was a request for a final decision of the contracting officer, and the contracting officer's subsequent denial of that submission was a final decision on a claim. The Board erred when it concluded there was no jurisdiction to consider the appeal.

Finally, the Board noted that the March 5th submission contained a certification, but not a proper certification. However, a defect in the certification does not deprive a court or board of jurisdiction over the claim, and the defective certification shall be required to be corrected prior to final judgment.

Takeaways: 1) Be careful when identifying an REA or a Claim. If you intend a document to be an REA, so state. If you intend it to be a claim that warrants a final decision by the CO, you should style it as a "Claim pursuant to the Contract Disputes Act." Of course you should also state that you request a final contracting officer's decision.

2) Even if you do not style your claim properly, if it contains all of the elements necessary, and even if it doesn't contain "magic words" or a typical claim format, the Federal Circuit will construe it to be a claim.

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