

CORRECTIBLE (DEFECTIVE) CLAIM CERTIFICATION

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In a recent blog on this site, “Defective Claim Certification or No Claim Certification,” this blog explained that a contractor’s failure to include a statutorily required certification when it submitted its initial claim to the contracting officer would mean that the Boards and Court of Federal Claims had no jurisdiction to consider the claim. The counterpoint to this problem is the submission of a defective, but correctible claim certification submitted to the contracting officer with the initial claim. Here is the statutory language:

The Contract Disputes Act of 1978, codified at 41 U.S.C. § 7103 requires that all claims of more than \$100,000 be certified, and meet other requirements as set forth below in the statute:

(b) CERTIFICATION OF CLAIMS.—

(1) REQUIREMENT GENERALLY.—For claims of more than \$100,000 made by a contractor, the contractor shall certify that—

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor’s knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) WHO MAY EXECUTE CERTIFICATION.—

The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—

A contracting officer is not obligated to render a final decision on a claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected....

The Federal Acquisition Regulation (“FAR”) provides the specific language for contractors to use for their certification:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

FAR 33.207(c). The FAR also states that a “defective certification” means “a certificate which alters or otherwise deviates from the language in FAR 33.207(c) or which is not executed by a person authorized to bind the contractor with respect to the claim. *Failure to certify shall not be deemed to be a defective certification.*” FAR 33.201 (emphasis added).

In *WIT Associates, Inc.*, ASBCA No. 61547, Dec. 19, 2018, the Board considered a claim for \$867,000 that included a signed certification which read:

In accordance with FAR 52.233-1, I certify that this claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which *Guardian* believes the Government is liable; and that I am authorized to certify the claim on behalf of *Guardian*.

[Note: *Guardian* is the parent of WIT, the appellant. The ownership and management are the same, according to the case]

As submitted, the ASBCA found that it had jurisdiction because the certification was “defective but correctible.” The Board noted that the certification failed to meet the third and fourth (C and D) attestations of a proper certification, by attempting to certify the claim in the name of, and on behalf of an entity (*Guardian*) other than the actual contractor. It had been submitted in good faith, however.

The Board refused to dismiss the claim because of the defective certification, and indicated that an order requiring correction of the certification would follow.

Takeaway. Use the FAR language for certifying your claim over \$100,000. Do not vary or change the language. If you are unable to certify, you should not submit your claim and certification until you can certify.

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