

SAME OPERATIVE FACTS IN CLAIMS

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BB Government Services Srl received a contract from the Air Force to construct an addition to Building 9109 at Aviano Air Base in Italy. BB alleged that the existing structure could not support a new two-wing plenum gate required by the contract, and sought to recover \$121,214 in damages for design and construction of a support portal for the new gate. *BB Government Services Srl*, ASBCA No. 63255, March 2, 2023. BB made claims as follows:

- Count I, that the support portal was extra work for which it was entitled to an equitable adjustment under the changes clause
- Count II, that the Air Force provided defective specifications for the project
- Count III, that the Air Force had superior knowledge on the inadequacy of the existing structural support for the new gate

BB also claimed in count IV that the Air Force had ratified BB's entitlement for the extra work performed (not as issue in this appeal).

The Air Force moved to strike Counts I, II and III for lack of jurisdiction, alleging that they presented claims that were never presented for a contracting officer's final decision ("COFD")

BB determined that the building's design structure could not support the weight of a new gate, and submitted a Request for Equitable Adjustment ("REA") for the extra costs of additional structural work. Approximately two months later, the Air Force Contracting Officer ("CO") denied BB's REA, stating this was a final decision, and advised BB of its rights to appeal to the Board. BB did appeal the decision within the required 90 days.

The Board denied the Air Force's motion to strike the three counts, noting that even though the REA did not explicitly request a COFD, BB has specifically requested that the Government make a "fair adjustment in the contract amount," which was a non-routine request for payment that provided the Air Force with adequate notice of both the basis of the dispute and the amount in question. The Board noted that "some amount of vagueness in a claim is acceptable so long as the claim contains sufficient information to allow the CO to evaluate its merits." Further, multiple claims presented to the Board must derive from the same set of common or related operative facts as the claim present to the CO, and seek the same or similar relief. The contractor is not required to identify the exact legal theory on which relief is sought in the claim, so long as the CO can give meaningful consideration of the claim.

The Board held that each of BB's three counts stemmed from the same set of operative facts that supported the REA claim (lack of structural capacity to support the new gate and the Air Force order for BB to design and construct an additional support portal). As a result, because all three counts in BB's complaint stemmed from the same set of operative facts as those in BB's REA/claim, the Board denied the Air Force motion to strike.

Takeaway. Be as specific as you possibly can when submitting either an REA or a formal claim. If you ultimately appeal a single claim, but other claims are based on the same set of operative facts, the Board will consider the other appeals.

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