

NOT A FINAL CONTRACTING OFFICER'S DECISION

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The Contract Disputes Act (“CDA”), 41 USC §§ 7101-7109, requires both a claim and a contracting officer’s (“CO”) decision on a claim prior to making an appeal to a Board of Contract Appeals. FAR 2.101 defines a claim 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.” Without a CO decision (or a deemed denial of a claim), a contractor may take no appeal to the Board or to the Court of Federal Claims. This is precisely what happened in *Optum Public Sector Sols. v. Dept of Veterans Affairs*, CBCA 7920, Nov. 21, 2023, where there was no final CO decision. The Board dismissed the appeal for lack of jurisdiction.

The Dept of Veterans Affairs (“VA”) CO sent Optum a letter responding to the contractor’s request for a guidance letter on payment guidelines that had been issued earlier. VA requested that Optum reimburse VA for any demand for payment in accordance with FAR 32.604. The CO’s letter did not quantify the amount owed, state that the letter was a final decision, or provide Optum with notice of its appeal rights.

The Board noted that a letter lacking a statement that it is a final decision, or providing a notice of appeal rights, is not fatal to the issuance of a final CO decision. However, the CO’s failure to quantify the amount owed and thereby state a sum certain demonstrated that the CO lacked the intent to issue a government claim. Furthermore, the CO mentioned the demand process in FAR 32.604, indicating that Optum’s letter was only a step in the assertion of a formal demand for repayment, but not a final decision. To be a final claim in this process, the CO must notify the contractor of the final claim, and permit it to respond. The CO’s letter in this matter did neither of those two things.

As a result, lacking an actual claim and a final CO decision, the Board dismissed the case for lack of jurisdiction.

Takeaway. When a contractor is seeking a final decision under the CDA, ask for a “final decision of the CO” in your claim letter. Also include in your claim letter the other requirements that have been discussed in numerous previous blogs. If you are unsure if a CO letter is a “final decision,” write back to the CO and ask if it is a final decision.

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