

## **COURT HAS NO JURISDICTION TO CONSIDER CLAIMS ON BLANKET PURCHASE AGREEMENTS**

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McLeod Group, LLC was awarded a Blanket Purchase Agreement (“BPA”) by the Department of Homeland Security (“DHS”) for management consulting services. Thereafter, DHS awarded seven task orders to McLeod, pursuant to the BPA. McLeod submitted a certified claim to the agency alleging that DHS failed to execute its responsibilities under the BPA in good faith and a trusted manner, and had acted in bad faith by not issuing additional within-scope task orders to McLeod. *McLeod Group, LLC v. United States*, No. 18-628C (Fed. Cl. April 4, 2019). When McLeod appealed on these three allegations (which were part of the appeal), DHS moved to dismiss them on the grounds that the Court had no jurisdiction under the Contract Disputes Act, and the Court did dismiss the allegations.

The Court noted that BPA’s are a “simplified method of filling repetitive needs for supplies or services by establishing ‘charge accounts’ with qualified sources of supply.” FAR 13.303-1(a). Further, the court noted that a BPA lacks the mutuality of consideration required to be a contract, because they are “merely a framework for future contracts and only creates a contractual obligation with regard to future orders.” *Zhengxing v. United States*, 204 Fed. Appx 885 (Fed. Cir. 2006).

The Court concluded that it did not possess jurisdiction to consider a Contract Disputes Act Claim based on McLeod’s BPA for the following reasons:

- To establish jurisdiction, a plaintiff must establish the existence of an express or implied contract with the government. Since BPAs are merely frameworks for future contracts (a set of ground rules), no obligations are assumed by either party until orders are given by the government and accepted by the contractor. Therefore, this was not a contract.
- The text of the BPA states that this agreement is not a contract, which shows the parties did not intend the BPA to be a contract.
- The BPA provides that it does not obligate any funds, and that task orders will be placed against the BPA for services. This meant it lacked the mutuality of consideration needed to be a contract.
- The BPA does not impose any performance obligations upon either party, and indicates that performance obligations will be specified in task orders to be issued pursuant to the BPA

The court noted that the seven task orders issued pursuant to the BPA were contracts and that fact was not in dispute. But McLeod had not established that the BPA itself was a contract, therefore his claims pertaining solely to the BPA cannot be considered by the Court.

The Takeaway. Contract Disputes Act claims cannot be appealed to the Court (or a Board of Contract Appeals) based solely on a BPA. They can, however, be appealed, after a claim, on a task order issued under a BPA.

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