

CONTRACTING OFFICER CANNOT ISSUE A “FINAL DECISION” TO CREATE A CLAIM

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A recent decision of the Civilian Board of Contract Appeals (“CBCA”) dismissed for lack of jurisdiction an appeal which was based on a Contracting Officer’s “final decision” on a Request for Equitable Adjustment (“REA”), because the requesting document was not a claim. *Gulf Tech Construction LLC v. Dept of Veterans Affairs*, CBCA 7447, August 12, 2022. Even though the Contracting Officer styled his decision as a “final decision,” and notified Gulf Tech of its appeal rights, the underlying document did not qualify as a “claim” under the Contract Disputes Act (“CDA”), and the CBCA therefore had no jurisdiction.

The agency issued a contract to Gulf Tech for construction work at a VA medical center, but certain delays and disputes arose between the parties. Gulf Tech submitted an REA with the intent and expectation to resolve matters with the contracting officer. The REA was for \$234,673.41. Gulf Tech did not explicitly request a final decision from the contracting officer, did not submit a written certification with its REA as required by the CDA, and did not even sign the REA.

Several months later, the VA contracting officer issued what he called the “final decision of the contracting officer” on what Gulf Tech had submitted. He denied the request, except for \$46,401.66. In the decision, he also provided Gulf Tech its appeal rights as set forth in FAR 33.211(a)(4)(v). Gulf Tech Appealed.

The Board concluded that Gulf Tech did not submit a CDA claim (which gives rise to the Board’s jurisdiction when there is a final decision, either directly or indirectly if “deemed denied”) because:

- Gulf Tech made no request, explicitly or implicitly, for a Board decision
- The REA was for more than \$100,000, and was not certified, as the CDA required, and thus could not constitute a CDA claim.

The CBCA noted that even though the contracting officer issued what he called a “final decision” in response to Gulf Tech’s REA, this does not create jurisdiction. If no claim was made which meets the CDA requirements, there is no basis for Board jurisdiction of an appeal. The CBCA did not possess jurisdiction on this appeal, and dismissed it. The Board noted that Gulf Tech could submit to the contracting officer a certified claim at some time in the future that meets CDA requirements, and appeal a final decision if it chooses.

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