

SIMPLE EXPLANATION OF BOARD JURISDICTION ON CLAIMS

By Richard D. Lieberman, Consultant and Retired Attorney

When a contractor brings an appeal of a claim to a Board of Contract Appeals (“Board”), it is the contractor’s responsibility of the Appellant to establish Board jurisdiction. Board jurisdiction derives from 41 U.S.C. § 7105(e)(1)(A) which confers jurisdiction to decide an appeal from a decision of a contracting officer relative to a contract made by that department or agency. *Peace Ambition Const. Co.*, ASBCA Nos. 63938, 64024, July 10, 2025. *Peace Construction* provides a simple explanation of Board jurisdiction on claims.

Peace Construction involved an Air Force (“USAF”) contract to provide forklifts for “delivery and pickup” for 20 days to Camp Thompson in Afghanistan. Peace Construction then entered into a subcontract, leasing two forklifts from a subcontractor, and delivering them to Camp Thompson, which were received by the USAF at the Camp. Appellant requested assistance from the government in retrieving the forklifts from Camp Thompson, until the Appellant fled Afghanistan due to threats from the Taliban for doing business with the government. Then, the Appellant submitted a certified claim for the cost of the two forklifts plus rental charges to the date of the claim. The government’s final decision cut out about \$1 million from the claim because the forklifts were not recovered from Camp Thompson “due to unforeseen circumstances prior to, or after U.S. forces departed from Afghanistan.”

The USAF moved to dismiss the appeal for lack of jurisdiction stating that Appellant’s claim arose from a contract between Peace and its subcontractor which was executed after the government terminated Appellant’s contract for convenience. The USAF argued that there was no privity of contract because the government was not a party to the subcontract.

The Board noted the Appellant’s responsibility to establish jurisdiction, which is founded upon privity of contract with the government, however, all that is necessary is an allegation that the Appellant has an express or implied contract with the federal government. In denying the USAF motion to dismiss the Board said this, (citations to the Board’s factual record omitted):

Appellant has met the requisite requirements for the Board to possess jurisdiction over Appellant's claims. Appellant entered into a contract with the government to provide forklifts for the government's use. After the government terminated that contract for convenience, Appellant submitted three claims based on an alleged breach of contract, specifically breach of the government's duty to return the forklifts to Appellant. Contrary to the government's attempts to cast Appellant's claims as a dispute between Appellant and its former subcontractor, Appellant's claims request damages for the replacement cost of the two forklifts, and the accrued daily rental fees associated with the delayed return of the forklifts, both of which directly relate to its contract with the government. Indeed, the government has already conceded that Appellant is entitled to \$360,000 for the lost forklifts [instead of Appellants claim for \$3.1 million].

That Appellant characterized its claim as one between it and its subcontractor in an email accompanying a notice of appeal to the Board is irrelevant. The scope of the Board's jurisdiction is determined by the contents of the claim submitted to the contracting officer; thus, the claim, not other documents filed with the Board, determines the scope of our jurisdiction. [*Fidelity*, 22-1 BCA ¶ 38,154 at 185,302](#) (citing *IBM Corp.*, ASBCA No. 60332, 18-1 BCA ¶ 37,002 at 180,190). Therefore, because we determine that Appellant's claims relate to its contract with the government, we conclude the Board has jurisdiction over these appeals.

Takeaway. This is a very simple explanation of the Board's jurisdiction. The facts were that the Appellant leased the forklifts from a subcontractor, then delivered them as required, but the government could not return them after the period of rental (because of the U.S. withdrawal from Afghanistan). The subcontract really has no bearing on the contractor's claim for the cost of non-return by the USAF of the forklifts. The USAF and the Appellant discussed the subcontract in the papers submitted to the board, but that subcontract is only relevant to the Appellant's costs (presumably) to pay back its subcontractor for the non-returned forklifts, and is not related to the Board's jurisdiction.

For other helpful suggestions on government contracting, visit:

Richard D. Lieberman's FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and **Mistakes in Government Contracting**
at <https://richarddlieberman.wixsite.com/mistakes>.