

CAN A “SUM CERTAIN” BE FOUND IN THE CLAIM?

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Most of this blog’s readers know that in order to qualify under the Contract Disputes Act as a claim, the claim must:

1. Be a written demand or written assertion, seeking
2. As a matter of right
3. The payment of money in a “sum certain,”
4. The adjustment of contract terms, or
5. Other relief arising from a contract AND
6. Be certified if the amount exceeds \$100,000

FAR 2.101. Most of that definition is self explanatory, but what exactly is a “sum certain.” It is a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim. *Creative Management Servs, LLC v. United States*, 989 F.3d 955, 963 (Fed. Cir. 2021). Simply stated, either an exact amount must be included in the claim for which the payment is sought (e.g. \$100,021), or the contracting officer must be able to compute the exact amount from the information contained in the claim.

In *The Heirs of Bahawouddin, Son of Neyaz Mohammad v. Dept of State*, CBCA 7135, October 26, 2022, the Department of State sought to dismiss a claim involving a contract for lease of residential property in Kabul, Afghanistan because the claim allegedly did not include a “sum certain.”

The claim demanded payment of \$500,000 for unpaid rent and damages from demolition of structures on the property. The claim sought “payment of rent in the amount of \$10,000 per month from March 1, 2017 until paid. The State Department denied this claim, arguing that the “until paid” language was imprecise and that the claim sought “an open ended, unascertainable amount of rent” and therefore failed to meet the sum certain requirement. For that reason, the Department of State stated that the Board lacked jurisdiction because the claim did not meet the legal requirements.

On this ground of appeal and the State Department’s motion to dismiss, the Board held that the claim did contain a “sum certain.” Specifically, “the sum certain was ascertainable at the time the claim was submitted---the monthly rent of \$10,000 per month multiplied by the number of months since the State Department had ceased rent payments, plus \$500,000 for the alleged damage to the property.”

Takeaway. Even though a “sum certain” was not explicitly set forth in the claim, it was clearly ascertainable at the time of claim submission if the Contracting Officer merely “did the math.” On this ground, the Board rejected the State Department’s request to dismiss the appeal for lack of jurisdiction.

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