

ESSENTIALLY A MONETARY CLAIM AND SUM CERTAIN REQUIRED

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GE Renewables US, LLC (“GE”) sought in its appeal a declaration that it had the right to pursue a price adjustment in a contract that contained an economic price adjustment (“EPA”) clause.

GE Renewables US, LLC, ASBCA No. 63842, June 24, 2025. The only significant consequence of such a declaration would be a price adjustment (not a change in contract performance or the avoidance of costs) and the Board deemed the claim a “monetary claim” which required a statement of a “sum certain.” Because the appellant failed to state a sum certain, the Board dismissed the appeal for failure to state a claim.

The underlying contract included Federal Acquisition Regulation (“FAR”) 52.216-4, Economic Price Adjustment - Labor and Material, which required the contractor to notify the contracting officer if labor or material increased or decreased (which GE did). Then, the government was required to “negotiate a price adjustment in the contract unit prices and its effective date.”

GE submitted a written notification to the government of its intent to pursue a price adjustment under the EPA clause. After the government rejected the price adjustment on the grounds that EPA’s did not apply to construction contracts (such as this contract), GE submitted a “merit-only” claim, asserting that “there is no quantum.” The claim did not seek a sum certain, but simply requested that the contracting officer enter into negotiations to resolve the issue. The government moved to dismiss the claim because it failed to state a claim and did not include a sum certain for what essentially was a monetary claim.

Even though a “sum certain” is no longer a jurisdictional requirement for a claim, the issue of a lack of a sum certain can be raised by the government during discovery (which was done here). The Board held that GE’s essentially monetary claim did not state a sum certain, and a monetary claim that does not state a sum certain may be denied by the contracting office and dismissed on appeal to the board. The Board held that GE had reframed a monetary claim as a nonmonetary claim. GE sought a declaration that it had the right to seek a price adjustment under the EPA clause, but the only significant consequence of such a declaration would be a price adjustment which is purely monetary. Thus, the essence of the claim was monetary, even though not styled as such. The failure to state a sum certain meant that GE failed to state a claim, and the appeal was dismissed by the Board.

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