

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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MOTION TO DISMISS GRANTED IN PART:  
March 31, 2003

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GSBCA 16067-TD

CORNING CONSTRUCTION CORPORATION,

Appellant,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

Tarrant H. Lomax, Washington, DC, counsel for Appellant.

Marvin Kent Gibbs and Diane Mullaney, Office of Chief Counsel, Bureau of Engraving and Printing, Department of the Treasury, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **WILLIAMS**.

**HYATT**, Board Judge.

Corning Construction Corporation has appealed a contracting officer's decision denying its claim for an equitable adjustment and an extension of time to perform under a contract with respondent, the Bureau of Engraving and Printing, Department of the Treasury. Respondent has moved to dismiss the appeal for lack of jurisdiction because the claim was not certified in accordance with the requirements of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613 (2000).

### Background

The contract in question, contract number TEP 97-28, was awarded on July 7, 1999, for the replacement of respondent's main building roof. Appeal File, Exhibit A. On February 13, 2002, Corning submitted to the contracting officer its request for an equitable adjustment of \$124,448 and a time extension of 125 days. *Id.*, Exhibit T. The parties agree that this claim was in dispute at the time it was submitted to the contracting officer. The claim was not, however, certified. On January 9, 2003, the contracting officer issued a final decision on the merits of Corning's proposal, denying the claim in its entirety. *Id.*, Exhibit X. Corning filed a timely appeal with the Board. Treasury then filed the pending motion to dismiss the appeal for lack of jurisdiction.

### Discussion

Under the CDA, "[a]ll claims by a contractor against the Government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." 41 U.S.C. § 605(a). The CDA further mandates that with respect to monetary claims in excess of \$100,000 the contractor must certify "that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor." *Id.* § 605(c)(1). Although technical deficiencies in a certification may be corrected at any time before entry of judgment, the complete absence of a certification is not considered to be a mere defect that may be corrected so as to preserve the tribunal's jurisdiction. 48 CFR 33.201 (2001); *see, e.g., Metropolitan Area Transit*, VABCA 6759 (Feb. 12, 2003); *CDM International, Inc.*, ASBCA 52123, 99-2 BCA ¶ 30,467; *Eurostyle, Inc.*, ASBCA 45934, 94-1 BCA ¶ 26,458 (1993). Thus, when a monetary claim in excess of \$100,000 has not been accompanied by any certification whatever, the contracting officer's decision on the monetary claim is invalid and the Board lacks jurisdiction over any ensuing appeal of the denial of the claim. *W.M. Schlosser Co. v. United States*, 705 F.2d 1336 (Fed. Cir. 1983); *Skelly & Loy v. United States*, 685 F.2d 414 (Fed. Cir. 1982); *Golub-Wegco Kansas City I, LLC v. General Services Administration*, GSBCA 15387, 01-2 BCA ¶ 31,553; *Keydata Systems Inc. v. Department of the Treasury*, GSBCA 14281-TD, 97-2 BCA ¶ 29,330. Given the absence of a certification, we must dismiss the monetary portion of this appeal.<sup>1</sup>

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<sup>1</sup> We note that appellant recognizes that its failure to certify the monetary component of its claim must be remedied and has stated that it will submit the requisite certification and request another contracting officer's decision. In conjunction with this statement, appellant asks us to direct the contracting officer to expedite the decision on the certified claim since the underlying issues have presumably already been fully considered. Because the Board lacks jurisdiction over the monetary claim, it cannot exercise its authority to direct the Government to expedite its decision. It has been our experience, however, that in these circumstances a decision will generally be issued promptly. In any event, if a decision is not forthcoming within the time frame provided in the CDA, appellant is free to appeal the deemed denial of the claim. *See* 41 U.S.C. §§ 605-606.

Here, however, appellant has appealed the denial of both remedies it sought – an equitable adjustment and an extension of time totalling 125 days. Although the equitable adjustment claim required a certification, it was not necessary to certify the request for an extension of the contract time for performance. The denial of this request was properly appealed to the Board and remains before the Board for adjudication. See Western Aviation Maintenance, Inc. v. General Services Administration, GSBCA 14165, 98-2 BCA ¶ 29,816; Eurostyle.

### Decision

Treasury's motion to dismiss for lack of jurisdiction is **GRANTED IN PART**. The portion of the appeal that seeks an equitable adjustment to the contract price is dismissed.

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CATHERINE B. HYATT  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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MARY ELLEN COSTER WILLIAMS  
Board Judge

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