

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DISMISSED FOR LACK OF JURISDICTION: January 8, 2004

GSBCA 16134

HEMMER - IRS LIMITED PARTNERSHIP,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Steven C. Martin of Ziegler & Schneider, P.S.C., Covington, KY, counsel for Appellant.

Telo Braswell, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Judges **DANIELS**, **BORWICK**, and **NEILL**.

BORWICK, Board Judge.

The General Services Administration (GSA), respondent, has filed a motion to dismiss this appeal for lack of jurisdiction because the appeal was taken from a contracting officer's decision on an uncertified claim exceeding \$100,000. We grant respondent's motion. Under the Contract Disputes Act of 1978 (CDA), the Board lacks jurisdiction over an appeal of a contracting officer's decision on an uncertified claim that exceeds \$100,000.

Background

On October 20, 1988, appellant entered into a ten-year firm term lease with respondent for fifty-one thousand net usable square feet of space in premises located in Florence, Boone County, Kentucky. Appeal File, Exhibit 1. On or about February 10, 1999, through supplemental lease agreement seven, the parties agreed to extend the term of the lease through January 31, 2004. However the Government could terminate the lease on

or after January 31, 2002, by giving appellant at least one hundred and eighty days' written notice of its intent to terminate. Id. at 8. On March 6, 2002, the Government issued its termination notice, which cancelled the lease at midnight, September 30, 2002. Id. at 10.

On October 25, 2002, appellant sent to the contracting officer a letter alleging that, during its tenancy, the Government caused \$135,725 worth of damage to the property. The letter was not certified as a "claim" under the CDA. Appeal File, Exhibit 11. On November 4, 2002, respondent's contracting officer acknowledged receipt of appellant's "damage claim letter." Id. at 12. On February 20, 2003, the contracting officer issued a contracting officer's "final decision" denying the purported claim. Id. at 14. This appeal followed.

Discussion

The CDA requires that all 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) (2000). The CDA also provides in pertinent part:

A contracting officer shall issue a decision on any submitted claim of \$100,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than \$100,000, the contractor shall 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.

41 U.S.C. § 605(c)(1). Under the CDA, the Board has jurisdiction over timely appeals from final decisions of contracting officers. 41 U.S.C. § 607(d).

As seen above, the CDA requires certification of contractor claims in excess of \$100,000. 41 U.S.C. § 605(c)(1). For claims above the certification threshold of the CDA, certification is a jurisdictional prerequisite for initiating an appeal. W.H. Mosely Co. v. United States, 677 F.2d 850, 852 (Ct. Cl. 1982), cert. denied, 459 U.S. 836 (1983); Paul E. Lehman v. United States, 673 F.2d 352, 355 (Ct. Cl. 1982); Golub-WEGCO, Kansas City I, LLC v. General Services Administration, GSBICA 15387, 01-2 BCA ¶ 31,553. Although the contracting officer in this case issued a decision on an uncertified claim, the decision is a nullity since the contracting officer has no authority to waive a requirement Congress has imposed. W.M. Schlosser Co. v. United States, 705 F.2d 1336, 1338 (Fed. Cir. 1983) (citing Skelly & Loy v. United States, 685 F.2d 414, 419 (Ct. Cl. 1982)); Golub-WEGCO.

In its reply to respondent's motion, appellant argues that it should be allowed to correct a defective certification pursuant to 41 U.S.C. § 605(c)(6), which allows boards of contract appeals to retain jurisdiction pending correction of a defective certification. That provision, however does not apply to a failure to certify and thus is of no assistance to appellant. 41 U.S.C. § 605(c)(6); 48 CFR 33.201 (1998); Golub-WEGCO; Lockheed Martin Tactical Defense Systems v. Department of Commerce, GSBICA 14450-COM, 98-1 BCA ¶ 29,717; see also Keydata Systems Inc. v. Department of the Treasury, GSBICA 14281-TD, 97-2 BCA ¶ 29,330.

Appellant also suggests, without stating a reason, that the Government has waived its right to file the motion to dismiss. Perhaps appellant objects to respondent's allegedly belated filing of the motion after the completion of some discovery. A certification issue, however, concerns the Board's subject matter jurisdiction and may be raised by a party at any time. United States v. Newport News Shipbuilding and Dry Dock Company, 933 F.2d 996, 998 n.1 (Fed. Cir. 1991). Appellant's waiver argument lacks merit.

Since we lack jurisdiction over this appeal we must grant respondent's motion to dismiss.

Decision

Respondent's motion to dismiss is **GRANTED**. This appeal is **DISMISSED FOR LACK OF JURISDICTION**.

ANTHONY S. BORWICK
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

EDWIN B. NEILL
Board Judge