



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: January 15, 2015

CBCA 3915

GATEKEEPERS INTERNET MARKETING, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Wavely Veney, President of Gatekeepers Internet Marketing, Inc., Washington, DC, appearing for Appellant.

Michael Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **McCANN, DRUMMOND, and WALTERS**

WALTERS, Board Judge.

Respondent, the General Services Administration (GSA), has filed a motion to dismiss the instant appeal for lack of jurisdiction. For the reasons explained below, we grant the motion.

Background

Appellant's complaint indicated that its dispute involves purported non-payment for items delivered by appellant under a series of purchase orders. More particularly, appellant alleges, subsequent to its delivery of the items in question and its receipt of payments, the agency took back its payments by way of garnishments, because delivery records somehow were lost.

Soon after the complaint and appeal file were submitted by the parties, the Board expressed concern that, although the appeal was from a decision of an agency contracting officer, there did not appear to be a claim in the record that presented a dollar amount in a "sum certain" for the contracting officer's consideration, as contemplated by the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012) (CDA). Though appellant had sent the agency some email messages pertaining to its dismay with the garnishments, none of the messages asserted as a matter of right appellant's entitlement to monetary relief in a "sum certain" and none sought the contracting officer's decision under the CDA, either expressly or implicitly. An email message to GSA's finance office dated January 16, 2014, did allude to a "large purchase order" amounting to \$26,000, but did not demand payment of that amount or request a final decision from the contracting officer. Instead, appellant, by that communication, expressed the "hope" that an audit be performed by the finance office of all of appellant's orders and indicated that such an audit would be able to rectify the "confusion that has occurred," with respect to which the \$26,000 purchase order constituted "one example." The message was not addressed to the contracting officer, and while appellant forwarded a copy of it to the contracting officer on January 16, 2014, the forwarding message likewise does not demand payment or seek the contracting officer's issuance of a final decision under the CDA, but merely requests her assistance in obtaining copies of all past orders in 2012, so that the situation creating garnishments could be resolved. The message stated:

Once again thank you for your attention yesterday on our brief phone call. I wanted to request copies of our past orders in 2012. We have has [sic] some garnishments on numerous past deliveries and need your help to detail each order. However, without copies I can not correlate with Finance what indeed is accurate. I apologize in advance for the extra work this entails but greatly appreciate your support of Small Disadvantage [sic] Business. Please note that we recognize that providing the Purchase orders and or cancellations does not constitute any request for fulfillment. Per your request, I am writing you to formally request all GSA order [sic] provided to Gatekeepers Internet Marketing Inc. in 2012.

The Board, by order dated September 2, 2014, directed appellant to show cause as to why its appeal should not be dismissed for lack of jurisdiction. Appellant submitted a response to that show cause order on October 10, 2014. The response relied heavily on the above-mentioned January 16 email message, urging that it was a CDA “claim.” Respondent, on October 24, 2014, submitted a motion seeking Board dismissal of the instant appeal for lack of jurisdiction. The motion challenged appellant’s arguments and maintained that the Board is indeed without jurisdiction in this appeal, notwithstanding the issuance of a contracting officer “final decision,” since none of appellant’s prior written communications with the agency could qualify as a “claim” for purposes of the CDA.

Appellant was afforded two separate opportunities either to respond to the motion to dismiss or to submit a new claim that would render the motion (and the current appeal) moot and obviate any need for a response. It failed to avail itself of those opportunities and offered no explanation. Accordingly, we proceed to focus on the motion to dismiss without further input from appellant.

Discussion

The CDA requires that “[e]ach claim by a contractor against the Federal Government relating to a contract shall be in writing” and “shall be submitted to the contracting officer for a decision.” 41 U.S.C. § 7103(a)(1), (2). In addition, a CDA claim seeking monetary relief must contain a demand for “the payment of money in a sum certain.” 48 CFR 2.101 (2014) Although no particular wording is necessary, the demand must contain “a clear and unequivocal statement that gives the contracting officer adequate notice of the . . . amount of the claim.” *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987). Generally, “[t]o comply with the sum certain requirement for a valid claim, a fixed amount must be stated.” *McAllen Hospitals LP v. Department of Veterans Affairs*, CBCA 2774, et al., 14-1 BCA ¶ 35,758, at 174,977 n.9 (quoting *ASP Denver, LLC v. General Services Administration*, CBCA 2618, 12-1 BCA ¶ 35,007, at 172,041). Where a monetary claim is not stated in a “sum certain,” it does not qualify as a “claim” under the CDA and, absent a CDA “claim,” the Board has no subject matter jurisdiction under the CDA to resolve an appeal, regardless of whether the claim has been the subject of a decision by the agency contracting officer. Under such circumstances, the appeal must be dismissed for lack of jurisdiction. *R&G Food Services, Inc. v. Department of Agriculture*, CBCA 3126, 13 BCA ¶ 35,291. Here, we find that appellant has not submitted a “claim” for decision under the CDA and that the Board is thus without jurisdiction to adjudicate the appeal.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION.**

RICHARD C. WALTERS
Board Judge

We concur:

R. ANTHONY McCANN
Board Judge

JEROME M. DRUMMOND
Board Judge