



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: August 17, 2017

CBCA 5787

KEO & ASSOCIATES, INC.,

Appellant,

v.

DEPARTMENT OF LABOR,

Respondent.

Jeffrey M. Gallant of Clark Hill PLC, Detroit, MI, counsel for Appellant.

Savannah L. Wilson, Office of the Solicitor, Department of Labor, Washington, DC, counsel for Respondent.

Before Board Judges **HYATT**, **LESTER**, and **O'ROURKE**.

**O'ROURKE**, Board Judge.

Appellant, KEO & Associates, Inc., filed an appeal of a contracting officer's final decision denying its uncertified request for equitable adjustment. The decision informed appellant of its right to appeal to this Board within ninety days of the receipt of the decision. Less than a month after the appeal was filed, the contracting officer rescinded her decision and appellant requested dismissal of the appeal without prejudice. We dismiss the case for lack of jurisdiction.

Background

On July 11, 2017, appellant filed a notice of appeal of a contracting officer's final decision arising from a Department of Labor (DOL) contract. In its appeal, appellant

explained that it had merely submitted a request for equitable adjustment (REA) to the contracting officer (CO) for additional work performed on the project—not a certified claim. Nevertheless, the CO issued a final decision on April 13, 2017, denying the REA. Appellant filed an appeal with the Board “out of an abundance of caution,” in the event the Board determined that the decision was proper.

On August 2, 2017, appellant requested that the Board dismiss the appeal without prejudice after receiving a letter from the CO retracting her decision. Appellant further stated its understanding that “upon entry of the dismissal of the Appeal, the subject REA . . . will revert back to the Government contracting activity for further consideration and review.”

### Discussion

Board Rule 12(c) provides, “A case may be dismissed by the Board on motion of either party . . . . Every dismissal shall be with prejudice to reinstatement of the case except as specified in paragraph (d) of this section.” 48 CFR 6101.12(c)(2016). Paragraph (d) states: “When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement within 180 calendar days after the date of the dismissal.”

In this case, the Board does not find dismissal of the appeal under Rule 12 to be appropriate. The Contract Disputes Act (CDA) requires that a contractor make its claim in writing, submit it to the contracting officer for a decision, and provide a certification of the claim if the amount of the claim exceeds \$100,000. 41 U.S.C. § 7101 - 7109 (2012). These requirements are jurisdictional prerequisites for the Board’s review. *Red Gold, Inc. v. Department of Agriculture*, CBCA 2259, 12-1 BCA ¶ 34,921, at 171,721 (2011). Here we have no certified claim or request for a contracting officer’s final decision from appellant. The requirements of the CDA have not been met. The Board is deprived of jurisdiction to proceed. *V.I.C. Enterprises, Inc. v. Department of Veterans Affairs*, CBCA 1089, 09-2 BCA ¶ 34,205, at 169,105 (citing *Tecom, Inc. v. United States*, 732 F.2d 935, 937 (Fed. Cir. 1984)).

As we recently noted, “When jurisdiction is lacking, we cannot proceed to decide a case. Our only function is to announce the lack of jurisdiction and dismiss the case.” *EnergX, LLC v. Department of Energy*, CBCA 3060, 17-1 BCA ¶ 36,633, at 178,414 (quoting *Monster Government Solutions, Inc. v. Department of Homeland Security*, DOT BCA 4532, 06-2 BCA ¶ 33,312, at 165,155 (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998))).

Decision

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

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KATHLEEN J. O'ROURKE  
Board Judge

We concur:

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CATHERINE B. HYATT  
Board Judge

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HAROLD D. LESTER, JR.  
Board Judge