



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: April 22, 2013

CBCA 3126

R&G FOOD SERVICES, INC. d/b/a PORT-A-PIT CATERING,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

John Lukjanowicz of the Law Offices of John Lukjanowicz, PC, Seattle, WA, counsel for Appellant.

Antonio T. Robinson, Office of the General Counsel, Department of Agriculture, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **McCANN**, and **GOODMAN**.

BORWICK, Board Judge.

Respondent has filed a motion to dismiss for lack of jurisdiction because the certified claim did not contain a “sum certain.” The appellant does not oppose respondent’s motion. We have reviewed the record and agree with the parties. Because the appeal is jurisdictionally deficient, the appeal must be dismissed for lack of jurisdiction.

Background

In this appeal, the certified claim sought a sum “not less than \$535,039.66.” Appeal File, Exhibit 9. Under the Contract Disputes Act (CDA) and its implementing regulations, a claim submitted to the contracting officer for the payment of money must be in a sum certain. 41 U.S.C. § 7103(a)(2) (Supp. IV 2011); 48 CFR 2.101 and 52.233-1(c)(2012);

Essex Electro Engineers, Inc. v. United States, 960 F.2d 1576, 1581-82 (Fed. Cir. 1992). A claim seeking “not less than” a stated sum is not a claim for a sum certain. See *Atlantic Industries, Inc.*, ASBCA 34,832, 88-1 BCA ¶ 20,244, at 102,472 (1987); *Sandoval Plumbing Repair*, ASBCA 54640, 05-2 BCA ¶ 33,072 at 163,933. A prerequisite to Board jurisdiction is a contracting officer’s decision on a claim. *Sharp Electronics Corp. v. McHugh*, 707 F.3d 1367, 1371 (Fed. Cir. 2013). Since there was not a proper CDA claim decided by the contracting officer, the Board lacks jurisdiction.

Decision

This appeal is **DISMISSED** for lack of jurisdiction.

ANTHONY S. BORWICK
Board Judge

We concur:

R. ANTHONY McCANN
Board Judge

ALLAN H. GOODMAN
Board Judge