



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: March 24, 2016

CBCA 5119

RICHTER DEVELOPMENTS, LTD.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Scott Silver of Silver & Garvett, P.A., Miami, FL, counsel for Appellant.

Jay Bernstein, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Judges **SHERIDAN**, **KULLBERG**, and **LESTER**.

**SHERIDAN**, Board Judge.

Appellant, Richter Developments, Ltd. (Richter), filed an appeal with the Civilian Board of Contract Appeals asking the Board to award it \$198,233.42 under General Services Administration (GSA) lease contract GS-04P-LFL64198. On March 21, 2016, the parties jointly moved the Board to dismiss the appeal for lack of jurisdiction because appellant failed to certify its claim.

### Findings of Fact

On August 10, 2015, Richter sent an email message to GSA with a request for an equitable adjustment (REA) of \$198,233.42 for delay damages and other losses due to alleged changes to the scope of a project to lease warehouse and office space in Miami, Florida. The REA was not certified.

The contracting officer issued a final decision denying the REA on October 8, 2015. On December 18, 2015, appellant filed a notice of appeal at the Board, where the matter was docketed as CBCA 5119.

On March 9, 2016, a telephone conference was conducted between the parties' representatives and the Board to discuss jurisdictional elements pertinent to this appeal. During that conference call the parties agreed that Richter's submission to the contracting officer had not been certified. Following the conference call, the parties jointly moved that the appeal be dismissed for lack of jurisdiction.

### Discussion

The Board derives its jurisdiction to consider contract disputes from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012). The CDA provides that "each 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." *Id.* § 7103(a)(1). The Federal Acquisition Regulation (FAR) defines "claim" as "a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract." 48 CFR 52.233-1(c) (2015). Interpreting the CDA and FAR, the Court of Appeals for the Federal Circuit has established that for jurisdictional purposes, a CDA claim exists for a nonroutine contract adjustment if there is: (1) a written demand, (2) seeking, as a matter of right, (3) the payment of money in a sum certain. *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc).

The CDA also requires that:

For claims of more than \$100,000 made by a contractor, the contractor shall certify that –

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

41 U.S.C. § 7103(b)(1); *see also* 48 CFR 33.207(c).

Certification of a claim of more than \$100,000 is not only a statutory requirement, but also a jurisdictional prerequisite for review of a contracting officer's decision before this Board. *Fidelity Construction Co. v. United States*, 700 F.2d 1379, 1384 (Fed. Cir. 1983); *see also W.M. Schlosser Co. v. United States*, 705 F.2d 1336, 1337-39 (Fed. Cir. 1983); *Essex Electro Engineers, Inc. v. United States*, 702 F.2d 998, 1004 (Fed. Cir. 1983). Although a defective certification may be corrected, *K Satellite v. Department of Agriculture*, CBCA 14, 07-1 BCA ¶ 33,547, at 166,154, the complete absence of any certification deprives this Board of jurisdiction. *B & M Cillessen Construction Co. v. Department of Health & Human Services*, CBCA 931, 08-1 BCA ¶ 33,753, at 167,084 (2007). Furthermore, certification after an appeal has been filed has no legal bearing on the Board's jurisdiction and cannot serve to cure a lack of jurisdiction. *Id.* at 167,085.

Finally, neither can a contracting officer's final decision issued on an uncertified "claim" over \$100,000 confer jurisdiction. Without a presentation of a proper claim, in this case, one that is certified, no decision is possible and any action taken by the contracting officer is a nullity. *See D.L. Braugher Co. v. West*, 127 F.3d 1476, 1480-81 (Fed. Cir. 1997); *Skelly & Loy v. United States*, 685 F.2d 414 (Ct. Cl. 1982); *Paragon Energy Corp. v. United States*, 645 F.2d 966 (Ct. Cl. 1981).

Based upon the parties' representations and our review of the correspondence submitted with the notice of appeal, Richter did not certify its submission to the contracting officer, and, therefore, its appeal must be dismissed for lack of jurisdiction.

Decision

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

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PATRICIA J. SHERIDAN  
Board Judge

We concur:

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H. CHUCK KULLBERG  
Board Judge

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HAROLD D. LESTER, JR.  
Board Judge