UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: May 14, 2020

CBCA 6664

ARON SECURITY, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Joseph A. Camardo, Jr. of Camardo Law Firm, P.C., Auburn, NY, counsel for Appellant.

J. Nicklas Holt, Office of the Field Solicitor, Department of the Interior, Knoxville, TN, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **DRUMMOND** and **CHADWICK**.

SOMERS, Board Judge.

Pending before us is the Government's motion to dismiss for lack of jurisdiction. The Government contends that appellant, Aron Security, Inc. (Aron Security), did not submit a claim to the contracting officer as required by the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2018) (CDA), alleging that appellant had made no demand for the payment of money in a sum certain as a matter of right. Although we disagree with the Government's contention that the contractor failed to demand payment in a sum certain as a matter of right, we dismiss the claim because it did not request a final decision from the contracting officer.

Background

The Department of the Interior awarded a multi-year contract to appellant. Towards the end of the final option year, the contracting officer modified the contract to include wage rates from the Department of Labor for the entire period of performance. On August 23, 2019, appellant asked the contracting officer to amend the contract to compensate appellant for costs incurred due to the increased wage rates. The contracting officer declined to pay appellant the sums requested.

On August 28, 2019, appellant submitted a second letter to the contracting officer expressing its disagreement with the contracting officer's determination. In the letter, appellant stated in pertinent part:

> We received your email denying the request for an amendment and disagree with this decision . . . by virtue of denying our request for additional funds to meet the governments [sic] requirements to pay certain benefits, will unjustly and undeniable [sic] enrich the National Park Service, knowingly with intent to have this small business incur a loss of such magnitude, and putting many jobs at risk. We are looking to recoup only two years of this multiyear contract. We could by rights go after these additional monies for every year of the contract we lost out on, due to the errors in the initial bidding process and the omission of the pertinent documents. Since the contract is almost over and [sic] we are only asking to provide for two years' worth of benefits, which now amounts to $61,655.98.

When the contracting officer failed to issue a final decision within sixty days, Aron Security appealed.[1]

Discussion

We derive our jurisdiction to consider contract disputes from the CDA which 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."

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[1] Subsequently, on February 20, 2020, Aron Security filed a revised claim with the contracting officer alleging facts similar to those in this appeal. This second claim seeks $146,818.64, and has been properly certified. The contracting officer denied the revised claim on March 23, 2020, and Aron Security appealed. That appeal has been docketed as CBCA 6780.

41 U.S.C. § 7103(a)(1) (2018). 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 of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract." 48 CFR 2.101 (2019). 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).

We find that the August 28, 2019, letter from the contractor could be considered to be a claim, as it presents "a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract." 48 CFR 2.101. The fact that the contractor first requested a modification to the contract does not limit the contractor's ability to submit a claim after the contracting officer rejected its request.

However, in addition to the act of submitting a claim, the CDA also requires that a claim seek a final decision from the contracting officer. Although an explicit request for a final decision is not required "as long as what the contractor desires by its submissions is a final decision," *EBS/PPG Contracting v. Department of Justice*, CBCA 1295, 09-2 BCA ¶ 34,208 (quoting *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1543 (Fed. Cir. 1996)), the contractor must include language that indicates that it is seeking a final decision. *See Magwood Services, Inc. v. General Services Administration*, CBCA 5869, 17-1 BCA ¶ 36,875 ("We use 'a common sense analysis to determine whether the contractor communicated [a] desire for a contracting officer's decision' on a demand for a sum certain") (quoting *Moss Card Consulting, Inc. v. General Services Administration*, CBCA 5193, 16-1 BCA ¶ 36,291, at 176,988). Here, the contractor never asked the contracting officer either explicitly or implicitly to issue a final decision. Without that, we cannot decide this claim.

Decision

The Government's motion to dismiss is granted and the appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

We concur:

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge