UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: April 13, 2023

CBCA 7547

CRYSTAL CLEAR MAINTENANCE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Marques O. Peterson of Pillsbury Winthrop Shaw Pittman LLP, Washington, DC; and Mary Buxton and Dinesh C. Dharmadasa of Pillsbury Winthrop Shaw Pittman LLP, Los Angeles, CA, counsel for Appellant.

Justin S. Hawkins, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **SULLIVAN**, and **CHADWICK**.

SULLIVAN, Board Judge.

Crystal Clear Maintenance (CCM) appealed the General Services Administration's (GSA) claim for the costs to repair water intrusion damage caused by CCM's alleged negligent performance of its maintenance contract for the Little Rock Bankruptcy Courthouse building. GSA moved to dismiss the appeal for lack of jurisdiction for failure to submit a timely appeal following the 2021 contracting officer's final decision asserting the Government's claim. We deny the motion, finding that GSA's July 2021 claim failed to state a sum certain, a failure that was not cured until GSA's subsequent assertion of further damages in October 2022.

Background

In February 2021, water intruded upon the courthouse, causing damage to the building that required reconstruction and replacement of equipment. On July 6, 2021, the contracting officer issued a claim letter to CCM demanding payment for some of the repair costs incurred, asserting that the damage was caused by CCM's failure to maintain water systems as required by its contract. The contracting officer asserted a demand for repayment of the costs but stated that only a portion of the costs were known at the time:

> This letter serves as the Contracting Officer's Final Decision and Demand for Payment regarding GSA's claim against Crystal Clear Maintenance ("CCM") regarding liability for damage as a result of the emergency water intrusion at the Little Rock Bankruptcy Courthouse.
>
> . . . .
>
> As of the date of this letter, the total cost of damage continues to be assessed, but is **currently a minimum of $173,978.19**.
>
> . . . .
>
> At this time, the cost of the build-back at the Little Rock Bankruptcy Courthouse has not been determined; however, it is anticipated that the project will be awarded and the cost will be known within forty-five (45) days of the date of this letter. CCM will be liable for the entirety of the cost of build-back, and GSA will issue an additional demand for payment to reimburse GSA for the total cost to repair the damage that resulted from this incident.

Notice of Appeal, Exhibit 2.

On October 13, 2022, GSA issued an "Updated Demand for Payment" to CCM. Notice of Appeal, Exhibit 1. The contracting officer referenced the previous letter and asserted that the total cost of the repairs owed to GSA was $741,797.50, the sum of the amount of $173,978.19, previously asserted, and a new demand for $567,819.31. *Id*. On October 21, 2022, CCM filed its appeal of GSA's claim.

Discussion

Pursuant to the Contract Disputes Act (CDA), a contractor must appeal a contracting officer's final decision within ninety days of the date of receipt of the decision. 41 U.S.C. § 7104(a) (2018). This deadline is strictly construed as a waiver of sovereign immunity. *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 15-1 BCA ¶ 35,976, at 175,787. To possess jurisdiction, the Board must find "both a valid claim . . . and a contracting officer's final decision on that claim." *James M. Ellett Construction Co. v. United States*, 93 F.3d 1537, 1541-42 (Fed. Cir. 1996).

A valid claim does not require "magic words," but rather it must meet each component of a claim as expressed in the regulation. *Transamerica Insurance Corp. v. United States*, 973 F.2d 1572, 1578 (Fed. Cir. 1992). A claim is defined as "a written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain." 48 CFR 52.233-1(c) (2021) (FAR 52.233-1(c)). The sum certain requirement applies to government claims. *Piedmont-Independence Square, LLC v. General Services Administration*, CBCA 5605, 18-1 BCA ¶ 37,107, at 180,614.

The sum certain requirement means that a claim must demand payment in "an amount readily ascertainable." *Creative Management Services, LLC v. United States*, 989 F.3d 955, 963 (Fed. Cir. 2021). Although sum certain does not require a definitive monetary sum, the amount demanded must be determinable "by a simple mathematical calculation." *Modeer v. United States*, 68 Fed. Cl. 131, 137 (2005); *see also Gardner Zemke Co. v. Department of the Interior*, CBCA 1308, 09-1 BCA ¶ 34,081, at 168,500. The use of qualifying phrases, such as "of a minimum" or "not less than" to describe the amount claimed does not satisfy the sum certain requirement. *ARI University Heights, LP v. General Services Administration*, CBCA 4660, 15-1 BCA ¶ 36,085, at 176,187; *Sandoval Plumbing Repair, Inc.*, ASBCA 54640, 05-2 BCA ¶ 33,072, at 163,933.

GSA's first demand for payment failed to satisfy the sum certain requirement because it used the qualifying language "at a minimum of" and stated that the cost of the damage was "continu[ing] to be assessed." Although GSA asserted that CCM was responsible for all of the costs to repair the damage caused by the water intrusion, GSA failed to put CCM on notice as to the exact amount and provided no way to ascertain that total amount until GSA issued the second demand letter. CCM's time to appeal could not have begun to run before CCM received this second letter.

Relying upon *Creative Management*, GSA argues that qualifying language does not undermine the sum certain requirement. The claim in *Creative Management* referenced the balance of a Federal Reserve account, which was readily ascertainable. *Creative Management*, 989 F.3d at 962. In the present appeal, GSA provided no supporting

documents or other information with its first letter that would have allowed CCM to ascertain the total amount sought.[1]

Decision

GSA's motion to dismiss for lack of jurisdiction is **DENIED**.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge

[1] The claim cannot be bifurcated because both of the demands issued by GSA are "based on a common or related set of operative facts." *Placeway Construction Corp. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990).