

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Marine Amazon Construction Company) ASBCA No. 60658
)
Under Contract No. W919QA-11-C-0076)

APPEARANCE FOR THE APPELLANT: Mr. Shiraqa Raoufi
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
MAJ Julie A. Glascott, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE STEMLER
ON THE GOVERNMENT'S MOTION TO DISMISS

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

On 1 July 2016, appellant filed a notice of appeal with the Board, seeking payment under the contract. The appeal was docketed as ASBCA No. 60658. On 4 August 2016, the government moved to dismiss the appeal for lack of jurisdiction, alleging that appellant did not submit a claim to the contracting officer prior to filing the appeal. The government's motion provided appellant with the address of the contracting officer if appellant wished to file a claim. In a 9 September 2016 email to the Board, appellant stated, in part, that "[w]e are agree with your office for motion, and also please let the contracting officer maker her decision."

By order dated 14 September 2016, the Board directed appellant to clarify whether it concurred with the government's motion and that it desired to submit a claim to the contracting officer. In an email dated 22 September 2016, appellant responded that it had submitted a certified claim to the contracting officer on 19 July 2016 but did not receive a decision. The Board treated this correspondence as a notice of appeal from the contracting officer's failure to issue a final decision on appellant's alleged 19 July claim, and docketed the appeal as ASBCA No. 60814 on 26 September 2016.

The Board's jurisdiction under the Contract Disputes Act is dependent upon the contractor's submission of a proper claim to the contracting officer for a final decision. 41 U.S.C. § 7103(a); *CCIE & Co.*, ASBCA Nos. 58355, 59008, 14-1 BCA ¶ 35,700 at 174,816. Appellant has conceded that it did not submit a claim to the contracting

officer prior to filing this appeal. Thus, the Board lacks jurisdiction to adjudicate the appeal. This appeal is dismissed without prejudice to the prosecution of ASBCA No. 60814.

Dated: 4 October 2016



MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



RICHARD SHACKLEFORD
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I concur



CRAIG S. CLARKE
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 60658, Appeal of Marine Amazon Construction Company, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals