



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITHOUT PREJUDICE: May 13, 2015

CBCA 4703

BON SECOUR MANAGEMENT, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John M. Manfredonia, William E. Thomas, and James Petersen of Manfredonia Law Offices, LLC, Cresskill, NJ, counsel for Appellant.

Jennifer Hedge, Office of Regional Counsel, Department of Veterans Affairs, Pittsburgh, PA, counsel for Respondent.

Before Board Judges **POLLACK**, **GOODMAN**, and **SULLIVAN**.

SULLIVAN, Board Judge.

On April 16, 2015, appellant, Bon Secour Management, LLC (Bon Secour), filed a notice of appeal from a contracting officer's decision issued by respondent, Department of Veterans Affairs (VA), on January 20, 2015. Bon Secour stated in its notice that its appeal was a protective appeal and that the contracting officer's decision was issued in error in response to a change order request, rather than in response to a claim submitted pursuant to the Contract Disputes Act (CDA), 41 U.S.C. § 7103(a) (2012). To its notice of appeal, Bon Secour attached the contracting officer's decision and the change order request, which appears to be a letter from another firm, Westmoreland Electric, Inc., to the project manager for appellant, with a "change order cost proposal" in the amount of \$4650.

On May 4, 2015, the parties filed a joint motion to dismiss the appeal without prejudice. According to the motion, VA agreed to withdraw the contracting officer's decision, "which shall be deemed null and void." The parties also agreed that "[a]ppellant may subsequently submit a claim regarding the subject matter of said decision in accordance with the Contract Disputes Act."

The Board grants the parties' joint motion. For the Board to possess jurisdiction to entertain an appeal for monetary relief, the contractor must first have submitted a claim to the contracting officer identifying the basis of the request, seeking payment of a sum certain, and requesting, either expressly or implicitly, a decision of the contracting officer. *Red Gold, Inc. v. Department of Agriculture*, CBCA 2259, 12-1 BCA ¶ 34,921, at 171,721 (2011). Upon review of the material submitted with the notice of appeal, it is clear that the contractor did not submit a claim pursuant to the CDA because the materials submitted do not seek a decision from the contracting officer. 41 U.S.C. § 7103(a)(1). Instead, the materials describe a "proposal" for which the prices would be valid for thirty days. Because this submission was not a claim, the Board does not have jurisdiction to decide any appeal of the contracting officer's final decision. *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871, et al., 15-1 BCA ¶ 35,928, at 175,603; *George Hyman Construction, Co.*, VABCA 3078, 90-1 BCA ¶ 22,551, at 113,192 (1989); *Custer Lumber Co.*, AGBCA 84-138-1, 84-1 BCA ¶ 17,222, at 85,750.

Decision

Accordingly, this appeal is **DISMISSED WITHOUT PREJUDICE**. As noted by the parties, appellant may appeal a decision of the contracting officer on a future claim, should appellant submit one, subject to the requirements of the CDA.

MARIAN E. SULLIVAN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

ALLAN H. GOODMAN
Board Judge