

D.C. CAB & TAXI DISPATCH, INC.**CONTRACT NO. V612P-4952****VABCA-5482****NORTHERN CALIFORNIA
HEALTH CARE SYSTEM
PLEASANT HILL, CALIFORNIA**

Alice Shawver, Manager, D.C. Cab & Taxi Dispatch, Inc., Sacramento, California, for the Appellant.

Charlma O. Jones, Esq., Deputy Assistant General Counsel; and
Phillipa L. Anderson, Esq., Assistant General Counsel, Washington, D.C.,
for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE McMICHAEL

D.C. Cab & Taxi Dispatch, Inc. (D.C. Cab or Contractor) seeks payment for what it characterizes as overdue invoices resulting from a contract to provide taxi services for the Department of Veterans Affairs Northern California Health Care System (VA or Government).

On January 26, 1998 VA terminated the Contractor's contract for default stating:

[Y]ou have failed to cure the conditions cited in our 'Cure Notice' dated January 2, 1998, and your letter, dated January 6, 1998, stating that 'DC Cab was no longer in business due to the fact that they could not secure insurance,' and since it is imperative that the insurance contract requirements be adhered to, you are therefore being notified that effective January 26, 1998, at 7:00 a.m. your right to perform under contract V612P-4952 is hereby terminated.

On February 13, 1998, the Contractor billed VA for services provided from September 11, 1997 through December 23, 1997. By letter dated February 19, 1998, Contracting Officer (CO) Vincent I. Osorio notified the Contractor that:

D.C. Cab is liable for any reprocurement costs incurred beyond the contract that was terminated. Since this is a requirements contract, and the exact amount of any excess costs are unknown until September 30, 1998, any monies due shall be held until such time.

The Contractor submitted another statement to VA on February 16, 1998 noting that \$8,524 was due on the contract. On February 23, 1998, the Contractor again contacted CO Osorio regarding the "past due invoices," asking the CO to "please reevaluate you[r] decision on not paying until Sept. 26, 1998."

On March 16, 1998, the March 10 appeal of D.C. Cab and Taxi Dispatch, Inc. was received and assigned docket number VABCA-5482. Noting that it appeared to the Board that the Contractor had not submitted a claim to the CO, D.C. Cab was ordered to Show Cause why the Board should not dismiss VABCA-5482 for lack of jurisdiction. The Contractor did not respond to our Order.

DISCUSSION

The *Contract Disputes Act of 1978 (CDA)* provides the statutory framework for, and the bases of, this Board's jurisdiction over claims made by the Contractor against the Government. 41 U.S.C. §§ 601-613. Specifically, section 605 (a) provides that "[a]ll claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." The Federal Acquisition Regulation (FAR) 52.233-1 (c) provides further guidance on the definition of a "claim," in pertinent part:

‘Claim’ as used in this clause, means 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 this contract. . . . A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act.

From the above definition, three requirements for a valid *CDA* claim have developed. As we stated in *Bridgewater Construction Corporation*, VABCA Nos. 2866 *et al.*, 90-2 BCA ¶ 22,764 at 114,264, in order to invoke the jurisdiction of this Board the contractor must "(1) submit to the contracting officer a written demand asserting specific rights and relief; (2) specify the monetary compensation sought; and (3) demand a final decision or certify the claim where necessary, in accordance with the requirements of the *CDA*." *Accord Reflectone, Inc. v. John H. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995). "The law does not require an explicit demand or request for a contracting officer's decision; as long as what the contractor desires by its submissions is a final decision, the prong of the *CDA* claim test is met." *James M. Ellett Construction Company, Inc. v. United States*, 93 F.3d 1537, 1546 (Fed. Cir. 1996); *Bill Strong Enterprises, Inc. v. Shannon*, 49 F.3d 1541 (Fed. Cir. 1995).

Once a proper claim is submitted to the Contracting Officer, 41 U.S.C. § 605 allows the Contracting Officer sixty days (or a "reasonable time" for claims in excess of \$100,000) to issue a decision on the claim. In the absence of a decision or the expiration of the time within which a decision must be issued, the Contractor's claim is not ripe for adjudication and the Board does not have jurisdiction over the claim. *Paragon Energy Corp. v. United States*, 645 F.2d 966, 967 (Ct. Cl. 1981); *White Plains Iron Works, Inc. v. United States*, 229 Ct. Cl. 626 (1981); *Briener Construction Company, Inc.*, VABCA No. 5461, 98-1, BCA ¶ 29,492.

It appears from the documents before us that the Appellant's February 23, 1998 letter

asks the CO to "[p]lease reevaluate you[r] decision on not paying until Sept. 26, 1998." Upon not receiving a response to its request from the CO, the Contractor apparently submitted an appeal directly to this Board. Based on the information currently before us, we find that the aforementioned submissions made by the Contractor to the CO do not meet the requirements of a proper *CDA* claim, and accordingly we cannot assume jurisdiction over this matter. To invoke the jurisdiction of the *Contract Disputes Act*, D.C. Cab should first submit a proper *CDA* claim to the CO. Following an adverse final decision (or the CO's failure to issue a final decision within the statutorily mandated time period outlined above), the Contractor may appeal directly to this Board or to the Court of Federal Claims.

DECISION

For the foregoing reasons, the Appeal of D.C. Cab & Taxi Dispatch, Inc., under Contract No. V612P-4952, VABCA-5482, is hereby Dismissed for lack of jurisdiction pursuant to Board Rule 5.

Date: April 27, 1998

Guy H. McMichael III
Chief Administrative Judge
Panel Chairman

We Concur:

Morris Pullara, Jr.
Administrative Judge

James K. Robinson
Administrative Judge