

CONSTRUCTORS &
CONSULTANTS, INC.

VABCA-6299-6304

CONTRACT NO. V689C-616

VA MEDICAL CENTER
WEST HAVEN, CONNECTICUT

Linda E. Alario, Esq., Alario & Associates, PC, Syracuse, New York for the Appellant.

Rheba Heggs, Esq., Trial Attorney; *Charlma J. Quarles, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEALS

1. On March 10, 2000, the Board received and docketed the appeal of Bhandari Constructors & Consultants, Inc. from a "final decision," dated February 14, 2000, denying the Contractor's various claims in the amount of \$768,997.75 arising out of Contract No. V689C-616 entered into with the Department of Veterans Affairs Medical Center, West Haven, Connecticut.
2. On June 21, 2000 Appellant filed a MOTION FOR DISMISSAL asserting that the Board was without jurisdiction over the claim because Contractor's claim was not accompanied by any purported certification as required by the *Contract Disputes Act of 1978*, 41 U.S.C. § 605 (c).

3. Section 605 (c)(1) provides, in pertinent part, that:

For claims of more than \$100,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

4. A telephone conference was held with the parties on June 22, 2000. Government Counsel did not dispute that BCCI had failed to make any attempt to certify its claims as provided in the *Contract Disputes Act*.

5. While a claim exceeding \$100,000 must be certified, technical deficiencies in a certification may be corrected at any time before final judgment is entered. 41 U.S.C 605(c)(6). The absence of any certification, however, is not considered a "defect." 48 CFR 33.201. Therefore, a "claim" exceeding \$100,000 not accompanied by any certification precludes the Board from exercising jurisdiction. *CDR International, Inc.*, ASBCA No. 52123, 99-2 BCA ¶30,467; *Eurostyle Incorporated*, ASBCA No. 45934, 94-1 BCA ¶26,458. Moreover, the fact that the contracting officer purported to issue a final decision does not serve to remedy this problem. *W.M. Schlosser Company, Inc. v. United States*, 705 F.2d 1336 (Fed. Cir. 1983). As the Court in *Skelly and Loy v. United States*, 685 F.2d 414, 419 (Ct. Cl. 1982) put it so succinctly:

In sum, any proceedings on an uncertified claim--under the CDA--are of no legal significance. In such a case, as in this case, the review process simply has not begun. The proper course of action--for a contractor whose case is dismissed for lack of jurisdiction--is the following:

(1) properly certify the claim; (2) resubmit the claim to the contracting officer; and (3) if there is then an adverse contracting officer's decision, appeal either to the board (section 606) or directly to this court (section 609). [citations omitted]

6. Accordingly, the appeals of Bhandari Constructors & Consultants, Inc., VABCA-6299-6304, are hereby dismissed for lack of jurisdiction pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: **June 23, 2000**

GUY H. MCMICHAEL III
Chief Administrative Judge
Panel Chairman

We concur:

JAMES K. ROBINSON
Administrative Judge

MORRIS PULLARA, JR.
Administrative Judge