

METROPOLITAN AREA TRANSIT,
INC. (M. A. T.)

VABCA-6759

CONTRACT NO. V616P-2930a

VA MEDICAL CENTER
MINNEAPOLIS, MINNESOTA

William L. Lucas, Esq., Edina, Minnesota, for the Appellant.

Rheba C. Heggs, Esq., Government Trial Attorney; *Philip S. Kauffman, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEAL

1. In a telephonic PREHEARING Conference convened by the Board on February 11, 2003, and attended by counsel for both parties, the Board explained that this appeal was received and docketed September 7, 2001 from a defective Contracting Officer's final decision denying a claim in excess of \$100,000. The Board further noted, *sua sponte* and without objection by either party, that Appellant's claim was not certified as required by the *Contract Disputes Act of 1978*, 41 U.S.C. § 605 (c).

2. 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.

3. 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]

4. Accordingly, the appeal of Metropolitan Area Transit, Inc., under Contract No. V616P-2930a, VABCA-6759, is hereby **DISMISSED FOR LACK OF JURISDICTION** pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: **February 12, 2003**

RICHARD W. KREMPASKY
Administrative Judge
Panel Chairman

We concur:

JAMES K. ROBINSON
Chief Administrative Judge

MORRIS PULLARA, JR.
Administrative Judge