

MANHATTAN CONSTRUCTION
COMPANY

VABCA-6992-6999

CONTRACT NO. V101BC-0128

VA MEDICAL CENTER
MUSKOGEE, OKLAHOMA

John Snyder, Oklahoma Division President, Manhattan Construction Company, Tulsa, Oklahoma, for the Appellant.

Kenneth B. MacKenzie, 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 June 13, 2003, the Board received and docketed the appeals of Manhattan Construction Company from a deemed denial of claims in the amount of \$994,347.25 arising out of Contract No. V101BC-0128 entered into with the Department of Veterans Affairs Medical Center, Muskogee, Oklahoma.
2. On June 27, 2003, the Board issued a NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE stating that it appeared the Board was without jurisdiction over the appeals because the Appellant's claim was not certified as required by the *Contract Disputes Act of 1978*, 41 U.S.C. § 605 (c).

3. On July 23, 2003, Appellant responded to the Order to Show Cause by acknowledging that it had not certified its claims and asked that these appeals not be dismissed while Appellant files a certified claim with the contracting officer.

4. 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]

5. Accordingly, the appeals of Manhattan Construction Company VABCA-6992-6999, are hereby dismissed for lack of jurisdiction pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: **August 15, 2003**

GARY J. KRUMP
Chief Administrative Judge