

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

RECONSIDERATION DENIED: August 3, 2000

GSBCA 15363-R

TMD U.S.A., INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Vincent Schickler, President of TMD U.S.A., Inc., Smithtown, NY, appearing for Appellant.

Robert Hoff, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **HYATT**.

DANIELS, Board Judge.

TMD U.S.A., Inc., moves us to reconsider a portion of our decision dismissing for lack of jurisdiction an appeal filed by TMD.

The case involved two claims, one for Equal Access to Justice Act costs and one for "In Business Damages due to wrongful suspension and debarment." The Board concluded that it had jurisdiction over neither matter.

TMD asks us to reconsider our determination as to the "In Business Damages" claim. We dismissed this part of the case because we have no jurisdiction over contractor claims like this one which are for more than \$100,000 and were not certified. TMD notes that the Contract Disputes Act provides that "[a] defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim." 41 U.S.C. § 605(c)(6) (Supp. IV 1998). TMD has also enclosed with its motion a new claim for "Loss Business Damages," addressed to a General Services Administration contracting officer, which is in the same amount as the "In Business Damages" claim and contains an appropriate certification.

The motion serves only to demonstrate that TMD has not read our decision carefully. We stated that we do "not have jurisdiction over appeals involving claims for more than \$100,000 which have not been certified," and made no reference to claims which were accompanied by defective certifications. We cited in support of our conclusion a decision, Keydata Systems, Inc. v. Department of the Treasury, GSBCA 14281-TD, 97-2 BCA ¶ 29,330, which explains that "we will decline jurisdiction over a case involving a claim in excess of \$100,000 only if the claim was not certified at all, or if we find that the certification was made in bad faith, fraudulently, or with reckless or intentional disregard of the statutory certification requirements." 97-2 BCA at 145,824. TMD's "In Business Damages" claim was not certified at all, so we could not take jurisdiction over the portion of the case which involved it.

Our decision also told TMD that "[i]n the event [it] submits a proper certification to the contracting officer, and the contracting officer issues a decision on the claim (or allows so much time to lapse without issuing a decision that a denial of the claim may be deemed), [TMD] may timely appeal that decision to us. The appeal would be docketed separately from this case." The fact that TMD has now submitted a certified claim to a contracting officer may have implications for a case which may be filed in the future, but it has no impact whatsoever on our ability to hear the case which is the subject of the motion for reconsideration.

Decision

TMD's motion for reconsideration is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

CATHERINE B. HYATT
Board Judge