

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DISMISSED IN PART: June 23, 2005

GSBCA 16582

BROWN & WEINER,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Gary K. Brown, Partner of Brown & Weiner, Woodland Hills, CA, appearing for Appellant.

Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **PARKER**, **NEILL**, and **DeGRAFF**.

DeGRAFF, Board Judge.

ORDER

In its response to the complaint, the General Services Administration (GSA) suggested the Board might lack jurisdiction to consider this appeal. At the request of the Board, the parties submitted briefs regarding jurisdiction. As explained below, GSA is correct, in part. We dismiss two of appellant's claims.

Background

On November 2, 2004, Brown & Weiner submitted a certified claim to the GSA contracting officer in connection with a lease contract. Brown & Weiner claimed GSA changed the contract to increase the size of a security barrier, which caused Brown & Weiner to incur additional costs. The claim requested reimbursement of \$196,401 and an increase of \$660 per month in the rental rate.

On January 11, 2005, Brown & Weiner submitted an amended claim to the contracting officer because GSA asked Brown & Weiner to include all of its change order requests as part of the claim it filed on November 2, 2004. The January 11, 2005 amended claim repeated the requests for \$196,401 and for a rent increase of \$660 per month, which the amended claim quantified as \$79,200. In addition, Brown & Weiner requested \$18,144 for a change related to cabling and \$2274 for a change related to a mail room cabinet. The amended claim did not contain a certification.

On February 4, 2005, Brown & Weiner appealed to the Board from what it viewed as the contracting officer's deemed denial of its November 2, 2004 claim, as amended on January 11, 2005. In its response to the complaint, GSA suggested the Board might lack jurisdiction.

Discussion

The Contract Disputes Act, which provides the Board with jurisdiction to entertain an appeal, requires a contractor to certify a claim in excess of \$100,000. It also requires a contractor to allow the contracting officer a minimum of sixty days to consider a claim before the contractor can file an appeal. 41 U.S.C. § 605(c) (2000). In order to determine whether these requirements are met, we must determine how many claims a contractor submitted to the contracting officer and to the Board. Regardless of the manner in which a contractor makes its requests to the contracting officer, if a number of disputes are based upon "a common or related set of operative facts," and if we will have to review "the same or related evidence" to make our decision, only one claim exists. *Placeway Construction Corp. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990). If, however, there are "independent dispute[s] not intertwined in the merits of the other claim items," the independent disputes are separate claims. *Phillips Construction Co.*, ASBCA 27055, 83-2 BCA ¶ 16,618 at 82,659.

No matter how Brown & Weiner characterized its two submissions to the contracting officer, the submissions contain three separate claims. The first claim was for a change related to a security barrier which Brown & Weiner asserted caused it to incur additional

costs of \$196,401 plus \$660 per month. Brown & Weiner certified this claim and submitted it to the contracting officer on November 2, 2004. We have jurisdiction to consider this claim because Brown & Weiner certified the claim and waited more than sixty days before it filed an appeal regarding the claim.

The second claim was for a change related to cabling which Brown & Weiner claimed caused it to incur an added \$18,144 of costs, and the third claim was for a change related to a mail room cabinet which Brown & Weiner claimed caused it to incur an added \$2274 of costs. Brown & Weiner submitted these claims to the contracting officer on January 11, 2005. These claims do not share common operative facts with one another or with the claim related to the security barrier. Each of these two claims is for less than \$100,000, so no certification was required. However, Brown & Weiner gave the contracting officer fewer than sixty days to consider these claims before it filed its appeal here at the Board. Because Brown & Weiner filed this appeal without allowing the contracting officer sixty days to consider the claims related to cabling and to a mail room cabinet, we must dismiss them for lack of jurisdiction.

Decision

The appeal is **DISMISSED IN PART**.

MARTHA H. DeGRAFF
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

EDWIN B. NEILL
Board Judge