

Don't get lost filing and prosecuting CDA claims

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Although the Contract Disputes Act ("CDA") is intended to provide an efficient way for contractors to resolve disputes with the Government, contractors often encounter difficulties when submitting and prosecuting CDA claims.

A claim may not satisfy the CDA's requirements, such as providing a certification or requesting a final decision. Or, a contractor may face problems at the appeal stage due to jurisdictional issues.

A recent decision from the Federal Circuit, *Securiforce International America LLC v. United States*, 879 F.3d 1354 (Fed. Cir. 2018), provides a good reminder on some of these issues.

In *Securiforce*, the contractor was awarded a requirements contract to deliver fuel to eight sites in Iraq. Shortly after performance began, the Government partially terminated the contract for convenience ("T4C") because the contractor would not be able to deliver the fuel from an approved source.

Subsequently, when the Government placed orders for delivery at two of the remaining sites, the contractor advised the Government that it would not be able to meet the delivery deadlines.

The Government responded by sending the contractor a cure notice, and the contractor responded by asserting that Government breaches, including the allegedly improper T4C, excused the late deliveries. The Government disagreed and terminated the remainder of the contract for default ("T4D").

The contractor filed a complaint at the Court of Federal Claims ("COFC"), seeking an order that the T4D was improper. After filing the complaint, the contractor sent the contracting officer a letter, requesting a final decision that the T4C was improper.

The contracting officer denied the request because the letter did not seek a sum certain. The contractor then amended its COFC

complaint to include a request for an order declaring that the T4C was improper.

After a trial, the COFC held that the contracting officer abused her discretion with respect to the T4C but that the T4D was justified. The contractor appealed to the Federal Circuit.

The Federal Circuit determined that the COFC should not have reviewed the propriety of the T4C because the letter that the contractor submitted did not satisfy the CDA's requirements. Namely, the letter did not seek a specific amount of money (also known as a sum certain) — a requirement for a CDA claim.

The Federal Circuit reasoned that although the contractor presented its letter as a claim seeking declaratory relief, a finding that the T4C was improper would entitle the contractor to damages. For this reason, the contractor was required to demand a sum certain in its claim, and its failure to do so meant that the COFC could not hear its appeal.

As for the T4D, the Federal Circuit held that the contractor could use the T4C as an argument to challenge the T4D, but the Federal Circuit agreed with the COFC that the T4D was justified.

It is all too easy to get lost in a labyrinth when submitting a CDA claim or prosecuting an appeal. CDA claims often involve substantial sums or serious issues that can make or break a business.

As shown in *Securiforce*, a relatively minor omission can thwart a claim or an appeal. It is important to have a full understanding of the requirements and the process.

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