



Maryland Procurement ALERT

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Request for Change Orders do not Satisfy the Requirement That Contract Claimants Submit Notices of Contract Claim

The MSBCA recently dismissed the appeals in *Oakmont Contracting, LLC*, MSBCA Nos. 3227 & 3228, on the basis that the Board lacked jurisdiction to hear an appeal where the Appellant had not formally filed a notice of claim or claim. The Board ruled that the Appellant failed to abide by State Fin. & Proc. § 15-219, which requires a contract claimant to file timely a notice of claim and claim thereafter.

The Appellant took the position that five potential change orders (PCOs) that the Appellant had submitted over the course of a year and a half satisfied the statutory requirement. Indeed, the Appellant requested that the procurement officer provide a “a written final decision” on Appellant’s request for PCOs. The agency responded by noting that the proposed change orders had been “not approved because there were no contract changes, or extra work authorized or ordered by [the State’s agent] and/or field revision related to the change order requests.” From this correspondence, the Appellant

filed Notices of Appeal directly to the Board. In response, the State moved to dismiss for lack of jurisdiction due to Appellant's failure to submit any notice of claim or claim.

The MSBCA rejected Appellant's argument that the PCOs constituted notices of claims and/or the claims themselves. Quoting *Syscom, Inc.*, MSBCA No. 2268 at 5 (2002), the Board ruled, "A PCO request, such as the ones Oakmont submitted, is not a notice of claim or a claim, but 'a demand for a change order and a refusal to perform directed work in the absence of issuance of a change order.'" The Board further noted that "The communications between Appellant and [the State's engineer] regarding the submission and rejection of the five PCOs are 'matters of contract administration over which the Board has no jurisdiction and not the dispute resolution process.'"

Because the Appellant had failed to submit a notice of claim or claim, the Board lacked jurisdiction. Without a claim, there was no requirement that the State issue a final decision and nothing from which the Appellant could appeal.

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