**GLR CORPORATION**

**CONTRACT NO. V786C-370** **VABCA-7018**

**VA NATIONAL CEMETERY**
**MOUNTAIN HOME , TENNESSEE**

***J. Brent Nolan , Esq.***, The Nolan Law Firm, PC, Knoxville, Tennessee, for the Appellant.

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**OPINION BY ADMINISTRATIVE JUDGE THOMAS ON RESPONDENT'S MOTION TO DISMISS AND ORDER STAYING PROCEEDINGS**

**BACKGROUND**

This appeal arises out of a Contract for expansion at the National Cemetery at Mountain Home, Tennessee. On April 9, 2003, GLR Corporation (GLR) filed a letter with the contracting officer (CO) stating: "This letter represents an overall claim for equitable adjustment of $188,081 for delays caused by several factors not under the control of GLR." The letter listed 9 separate issues in controversy:

1. Changes to the overall site drainage not on the plans
2. Soft areas under the existing roadways
3. Labor and expenses for time spent on the Committal shelter not constructed
4. Labor on delay of crypt installation due to the delay of approval on

shop drawings

5. Delay in approval of crypt installation before backfilling
6. Time extension on the delivery of white oak trees
7. Time extension for removal of lifting hooks from crypt lids
8. Phase IV roadway problems due to soft spots and an electric duct bank
9. Weather delays from March 2002 through February 2003.

Amounts claimed for each issue were not separately stated. On April 18, CO Harry Pearson responded to each of the 9 items and requested submission of a revised cost proposal by September 19, 2003. GLR requested that the CO enter into Alternative Dispute Resolution (ADR) on June 17, a request to which the CO did not respond. In spite of his April 18 response above, CO Pearson advised GLR on June 18 that since their letter of April 9 was not properly certified, it would be treated as a request for a change order and not a contract claim.

On July 1, 2003, GLR again requested that its claims be placed in ADR proceedings. On August 8, CO Pearson advised GLR that he was still trying to coordinate a response to the April 9 "claim." On August 22, GLR responded to the VA's April 18 letter by stating costs for each item and accepting the VA's proposed resolution of items 1, 2, 3, 6, 7, and 8. Thus, three issues were left: #4 ($40,366); #5 ($27,112); and, #9 ($32,909). On September 2, 2003, GLR appealed from the CO's failure to issue a final decision on its August 22 claim, and again requested an ADR. As of this date, there has been no final decision on any of the issues nor has the CO responded to the requests for ADR in writing as required by FAR 33.214(a)(4)(b). The Government has filed a Motion to Dismiss for Lack of Jurisdiction.

## DISCUSSION

The VA, citing ***CDM International, Inc.***, ASBCA 52123, 99-2 BCA ¶ 30,467 and ***Eurostyle, Inc.***, ASBCA 45934, 94-1 BCA ¶ 26,458 (1993) moves for dismissal for failure to properly certify a claim in excess of $100,000. Under the *Contracts Disputes Act* (CDA), "[a]ll claims by a contractor against the Government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. "41 U.S.C. §605(a). When the claim is in excess of $ 100,000, the contractor must certify "that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor." 41 U.S.C. § 605(c)(1). Thus, when a monetary claim in excess of $100,000 has not been accompanied by a certification, the contracting officer's decision on the monetary claim is invalid and the Board lacks jurisdiction over any ensuing appeal of the denial of the claim. ***W.M. Schlosser Co. v. United States***, 705 F.2d 1336 (Fed. Cir.) 1993).

Here, however, Appellant submitted and the CO responded to 9 separate claims, each being under $100,000. GLR did not fragment the claims and they do not arise from the same or closely related facts. "In determining whether separately stated claims are to be deemed unitary for certification purposes, neither the language employed by the contractor in making them, nor how they are organized, governs. What is vital is whether the demands arose out of essentially interrelated conduct and services, and the same or closely related facts." ***Walsky Construction Company v. United States***, 3 Ct. Cl. 615 at 619 (1983) We find Appellant's claims do not require certification.

Pursuant to section 605(c)(5) of the *CDA* a contractor may appeal the deemed denial of a contracting officer's failure to issue a final decision.

41 U.S.C. §§605(c)(5). The CO has had these issues in controversy before him since April 9, 2003. Appellant's repeated requests for ADR were ignored. Contractors, especially small businesses, should not be made to suffer long, unreasonable delays trying to resolve issues in controversy. Appellant is a small, woman owned business and perfection in claims presentation is not required. The only requirements for a valid claim under the *CDA* are that it be a written demand, seeking as a matter of right, the payment of money in a sum certain and a demand for a final decision. While a valid claim must include a "clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim, it need not contain additional supporting documentation or detailed evidence of the operative facts. The contracting officer's desire for more information [does] not change the claim status of the contractor's submission." ***H.L. Smith***, 49 F.3d at 1565; Accord ***John T. Jones Const. Co***., ASBCA No. 48303, 96-1 ¶ 27,997 at 139,839.

The request for a final decision does not have to be explicit. ***Transamerica Ins. Corp. v. United States***, 973 F2d 1572 (Fed. Cir. 1992). The CO knew or should have known that Appellant was trying to finally resolve these issues and that the revised claim submitted on August 22, 2003, required a final decision or other appropriate action such as ADR. Thus, we have jurisdiction over these appeals.

Where an appeal is from the contracting officer's failure to issue a final decision, Board Rule 1(3) authorizes us, in our discretion, to stay the proceedings pending issuance of a contracting officer's final decision within such period of time determined by the Board. 38 C.F.R. §1.783(a)(3). Since VA has had sufficient time to consider these claims, it will have 20 days from the receipt of this decision to issue a final decision or enter into ADR discussions.

## DECISION

For the forgoing reasons the Government's Motion to Dismiss is *denied*.

Date: **November 15, 2003**

WILLIAM E. THOMAS, JR.
Administrative Judge
Panel Chairman

We Concur:

RICHARD W KREMPASKY
Administrative Judge

PATRICIA J. SHERIDAN
Administrative Judge