

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**BCC-UIPROJECTS-ZAAZTC TEAM JV,**  
*Appellant*

v.

**SECRETARY OF THE ARMY,**  
*Appellee*

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2022-2143

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Appeal from the Armed Services Board of Contract Appeals in No. 62846, Administrative Judge J. Reid Prouty, Administrative Judge Michael N. O'Connell, Administrative Judge Richard Shackelford.

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Decided: March 27, 2024

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PATRICK BERNARD KERNAN, Kernan and Associates Law Group, PLLC, Washington, DC, argued for appellant.

DANIEL B. VOLK, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for appellee. Also represented by BRIAN M. BOYNTON, WILLIAM JAMES GRIMALDI, PATRICIA M. MCCARTHY.

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2 BCC-UIPROJECTS-ZAAZTC TEAM JV v. SECRETARY OF THE ARMY

Before PROST, TARANTO, and HUGHES, *Circuit Judges*.

PROST, *Circuit Judge*.

BCC-UIProjects-ZAAZTC Team JV (“B-U-Z”)<sup>1</sup> appeals an Armed Services Board of Contract Appeals (“Board”) decision dismissing B-U-Z’s Board appeal. For the reasons below, we affirm.

#### BACKGROUND

B-U-Z was formed for the purpose of bidding on a government construction contract. The B-U-Z joint-venture agreement provided that:

Both parties agreed to introduce and authorize **Mr. Ahmad Tariq Barakzai** to sign the contract on behalf of the joint venture and [he] is authorized to sign solicitations, applicable amendments, and bind the entire joint venture to its obligation under any contract which may result from the solicitation.

J.A. 193 (emphasis in original). The agreement was signed by Dr. Zahed<sup>2</sup> as VP of ZAAZTC and Mr. Barakzai as president of BCC. J.A. 194. In 2011, the government awarded B-U-Z the solicited contract and, as contemplated by the joint-venture agreement, the contract between the government and B-U-Z was signed by Mr. Barakzai. J.A. 107

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<sup>1</sup> Behnam Construction Company (“BCC”); United Infrastructure Projects (“UIP”); Zamarai Ali Ahmad Zada General Trading and Construction Company (“ZAAZTC”).

<sup>2</sup> We have adopted the Board’s convention of referring to “Dr. Zahed” with the same spelling throughout, while likewise noting that there are some spelling variations across the documents. *See* J.A. 3 n.4; *see also* J.A. 194 (“Dr. Wahid Zahedi”); J.A. 202 (“Dr. Wahidullah Zhed”); J.A. 2448 (“Dr. Wahidullah Zahed”).

BCC-UIPROJECTS-ZAAZTC TEAM JV v. SECRETARY OF THE ARMY 3

(Name and Title of Contractor or Person Authorized: Ahmad Tariq Barakzai/Team President).

On July 17, 2014, the contracting officer received a “request for equitable adjustment (REA)” that generally sought compensation for “delay days” and “differing site condition[s].” J.A. 2444. The REA was signed “Dr. Wahidullah Zahed . . . Vice President . . . BCC-ZAAZTC.” J.A. 2448.

On March 23, 2015, Mr. Barakzai sent a letter to the contracting officer that stated, “only Mr. Ahmad Tariq Barakzai has the legal rights to enter into contractual negotiations and/or claims with [United States Army Corps of Engineers] USACE and claims submitted to USACE by BCC-ZAAZTC JV-UIP Team officials and not signed by Mr. Ahmad Tariq shall be immediately dismiss[ed] by USACE.” J.A. 189. It further stated that any other individual submitting claims related to the contract “has no legal authority to do so.” *Id.*

Subsequently, another correspondence titled “[r]equest for [e]quitable [a]djustment” and dated May 27, 2015, was sent to the contracting officer. J.A. 199–202. Like the July 2014 REA—which Mr. Barakzai indicated was unauthorized and should be dismissed—this request was also signed “Dr. Wahidullah Z[a]hed . . . Vice President . . . BCC-ZAAZTC.” J.A. 202.

USACE sent Mr. Barakzai two emails inquiring about whether anything had changed since his March 23, 2015 letter. J.A. 2517–18. The emails explained that the contracting officer had received a May 2015 request signed by Dr. Zahed. *Id.* Based on Mr. Barakzai’s earlier letter, USACE reiterated its understanding that “USACE is to not accept such [an] REA or claim.” J.A. 2518. However, the emails generally provided Mr. Barakzai with an opportunity to indicate that the May 2015 request was authorized or to authorize it. J.A. 2518. Mr. Barakzai responded by stating that “[t]he REA has been submitted to USACE

4 BCC-UIPROJECTS-ZAAZTC TEAM JV v. SECRETARY OF THE ARMY

by unauthorized parties without Mr. Ahmad Tariq Barakzai's consent." J.A. 2517.

In 2021, B-U-Z appealed from what it termed "the contracting officer's deemed denial" of its 2015 claim.<sup>3</sup> J.A. 104. The Board dismissed B-U-Z's appeal on several alternative grounds. Relevant for our disposition, the Board concluded that (1) B-U-Z had not submitted a claim because neither REA was submitted by someone with authority to bind the joint venture and (2) even assuming that Dr. Zahed had authority to submit claims on behalf of B-U-Z, Mr. Barakzai, who was undisputedly authorized to bind the joint venture, had withdrawn those claims. *See* J.A. 11–15.

B-U-Z timely appealed to this court. We have jurisdiction under 28 U.S.C. § 1295(a)(10).

#### DISCUSSION

We review the Board's decisions on questions of law de novo. 41 U.S.C. § 7107(b)(1). The Board's jurisdiction under the Contract Disputes Act ("CDA") presents a question of law. *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc). The interpretation of a government contract is also a question of law. *Triple Canopy, Inc. v. Sec'y of Air Force*, 14 F.4th 1332, 1338 (Fed. Cir. 2021).

"As a prerequisite for the Board's jurisdiction, the CDA requires a contractor to present a valid claim over which the contracting officer has rendered a final decision." *Parsons Glob. Servs., Inc. ex rel. Odell Int'l, Inc. v. McHugh*, 677 F.3d 1166, 1170 (Fed. Cir. 2012). The CDA itself

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<sup>3</sup> Since we conclude that any submitted claim was unauthorized and withdrawn, communications from the contracting officer that might be considered as part of a denial or timing-of-denial analysis are unimportant for our purposes, so they have not been discussed.

BCC-UIPROJECTS-ZAAZTC TEAM JV v. SECRETARY OF THE ARMY 5

contemplates that claims are “by a contractor.” 41 U.S.C. § 7103(a)(1), (a)(2). Section 7101(7) defines “contractor,” as used in chapter 71, as “a party to a Federal Government contract other than the Federal Government.”

Here, the Board concluded that because the contracting officer was never presented with a request for decision *by a contractor*, there was no claim under the CDA. We agree that the requests Dr. Zahed submitted to the contracting officer were not requests *by* B-U-Z.<sup>4</sup> As a result, we do not reach the parties arguments about whether the REAs were requests for final decisions or whether the Board properly dismissed the claims as untimely.

There is no dispute that the only contractor here was B-U-Z. The only question is whether REAs submitted by Dr. Zahed were requests *by* B-U-Z. We agree with the Board that Dr. Zahed was not authorized by the joint-venture agreement to submit claims on behalf of B-U-Z. Thus, his submissions to the contracting officer were not B-U-Z's claims or requests.

B-U-Z argues that the Board incorrectly concluded that Dr. Zahed did not have authority to submit claims under the joint-venture agreement. Further, B-U-Z argues that the claims were authorized because BCC and ZAAZTC sent

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<sup>4</sup> In general, B-U-Z's briefing appears to acknowledge that there is a distinction between the issue of whether a claim was submitted by a contractor and the issue of whether a claim contains a compliant CDA certification. Nonetheless, B-U-Z argues that, “to the extent that the Board found” a certification defect, “this defect can be cured and does not divest the Board of jurisdiction.” Appellant's Br. 17. We agree with the Board that its determination that a claim was not submitted by the contractor is distinct from a determination that the claim's certification contained a technical defect. J.A. 11 n.16.

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