UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: March 5, 2008

CBCA 628

NU-WAY CONCRETE COMPANY, INC.,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

J. Marshall Gilmore, Winter Park, FL, counsel for Appellant.

John A. Thompson, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **GILMORE**, **FENNESSY**, and **HYATT**.

FENNESSY, Board Judge.

On January 29, 2007, Nu-Way Concrete Company, Inc., (Nu-Way or appellant) appealed the final decision of a contracting officer of the Department of Homeland Security (DHS or respondent) denying appellant's claim in the amount of $820,000.

In October 2007, the parties elected to pursue alternative dispute resolution (ADR) procedures in this matter. During a telephonic conference in preparation for the ADR proceeding, the Board Neutral observed, and the parties agreed, that the Board lacked

jurisdiction over the appeal because appellant had not certified its claim as required by the Contract Disputes Act. 41 U.S.C. § 605 (c)(1) (2000). The ADR proceeding was postponed to permit appellant to correct this jurisdictional defect.

During a subsequent telephonic conference with the presiding judge, appellant stated that there were two additional claims requiring a contracting officer's final decision. It was agreed among the Board and the parties that, following proper certification, if the contracting officer denied the claims, appellant would commence a timely appeal and simultaneously request dismissal of this appeal for lack of jurisdiction. It was anticipated that these actions would be taken in time to permit the ADR proceeding to be held on November 16 and 17, 2007.

When the Board received no further communications from the parties by January 24, 2008, the Board issued an order directing the parties to submit, by February 4, a status report and directing appellant to state whether it would object to the immediate dismissal of this appeal for lack of jurisdiction.

To date the parties have not responded to the Board's order or otherwise communicated with the Board.

Because appellant failed to certify the claim which is the subject of this appeal, this appeal is **DISMISSED FOR LACK OF JURISDICTION.**

EILEEN P. FENNESSY
Board Judge

We concur:

BERYL S. GILMORE
Board Judge

CATHERINE B. HYATT
Board Judge