

WHAT IS A “SUM CERTAIN?”

Copyright 2020 Richard D. Lieberman, Consultant & Retired Attorney

As used in Federal Acquisition Regulation (“FAR”) 52.233-1 (Disputes), a claim is a “ a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain...” What is a “sum certain?” Consider these phrases:

NOT A SUM CERTAIN

“about \$1,000.00”
“at least \$500.00”
“approximately \$600.00”
“no less than \$750.00”
well over \$800.00”

SUM CERTAIN

\$1,000.00
exactly \$500.00
a fixed amount of \$600.00
a settled amount of \$740.00
a specific amount of \$800.00

A “sum certain” simply means an exact amount, in dollars and cents, with no qualifiers. Contractors must understand that any claim submitted to a contracting officer must identify the “sum certain” that they are requesting. A contractor may not qualify its dollar amount with language (like that above under “not a sum certain”) which makes the amount not a sum certain, and will cause a contracting officer, board or court to dismiss the claim. That’s precisely what happened in *Odyssey Int’l, Inc.*, ASBCA No. 62062, Jan. 28, 2020.

Odyssey sought consequential damages on a construction contract from the Army Corps of Engineers in an amount of “at least \$15,033,862.” The Board noted that any qualification to a numerical amount, such as “at least,” “approximately,” “no less than,” or “well over” prevents its consideration as a “sum certain.” The Board further stated that reliance upon the FAR’s definition of a claim is well settled in law, *Reflectone, Inc. v. Dalton*, 60 F. 3d 1572, 1575 (Fed. Cir. 1995 (en banc)), and dismissed Odyssey’s claim for failure to state a sum certain.

Takeaway. Do not use qualifiers when making a monetary clam. State a specific sum certain. Even if the amount you claim must be based on estimates, use an exact sum certain that is the product of your calculations, and be prepared to support that sum.

For other helpful suggestions on government contracting, visit:
Richard D. Lieberman’s FAR Consulting & Training at <https://www.richarddlieberman.com/>, and
Mistakes in Government Contracting at <https://richarddlieberman.wixsite.com/mistakes>.