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By order of the Court, *Presiding Judge Roberto C. Naraja*

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

GPPC, INC.,)	CIVIL ACTION NO. 14-0169
)	
Plaintiff,)	
)	
v.)	
)	ORDER DENYING DEFENDANT’S
COMMONWEALTH OF THE)	PARTIAL MOTION TO DISMISS AND
NORTHERN MARIANA ISLANDS,)	DISMISSING JUDICIAL REVIEW
)	CLAIM
Defendant.)	
)	
)	

INTRODUCTION

THIS MATTER came before the Court on July 1, 2015, at 9:00 a.m. in Courtroom 202A for a hearing on Defendant’s partial motion to dismiss. Plaintiff GPPC, Inc. (“Plaintiff GPPC”) was represented by Mark Hanson, Esq., and Assistant Attorney General Christopher Timmons appeared on behalf of the Commonwealth of the Northern Mariana Islands (“Government”).

Based on review of the filings, oral argument, and applicable law, the Court hereby DENIES the Government’s partial motion to dismiss and dismisses Plaintiff GPPC’s judicial review claim.

BACKGROUND

On July 6, 2010, Plaintiff GPPC entered into a contract (“Contract”) with the Government, through the Department of Public Works (“DPW”), for the construction of the Cross Island Road Improvements project, Phase II-A, Project No. CM-NH-0031(014)(“Project”).

1 Included in the Contract was a provision allowing for an equitable adjustment of the price to
2 be paid to Plaintiff GPPC if it were to incur “additional work, incur costs for the provision of
3 additional materials, incur costs due to the substitution of items required or another change of
4 conditions not part of the original Contract.” This provision became of consequence when DPW
5 did not allow Plaintiff GPPC to use recycled excavated material in its construction of the Project.

6 This dispute between Plaintiff GPPC and DPW revolved around a disagreement over the
7 correct interpretation of contract specifications. Specifically, Plaintiff GPPC wished to recondition
8 and reuse excavated material from the Project site for use as road material as a cost saving measure.
9 However, DPW would not allow this action and asserted that the excavated material could only be
10 used for roadside embankments and landscaping pursuant to the Contract specifications.

11 Plaintiff GPPC and DPW continued to disagree from late 2010 to early 2011 when Plaintiff
12 GPPC notified the Director of Procurement and Supply (“Director”) of the dispute and notified him
13 that they would be seeking an equitable adjustment under the contract if it was not able to reuse the
14 material. The Director did not intervene in the matter and DPW required Plaintiff GPPC to incur
15 substantial additional costs in disposing of the excavated material and purchasing substitute
16 material.

17 On December 17, 2012, Plaintiff GPPC sent a letter to the Secretary of Public Works
18 (“Secretary”) detailing the additional costs and demanding an equitable adjustment to the Contract
19 price in the amount of \$588,855.08. DPW failed to render a decision on the demand and Plaintiff
20 GPPC then submitted its equitable adjustment claim to the Director. The Director issued a decision
21 on July 16, 2014, stating that “GPPC has no valid claim of an equitable adjustment as to the use of
22 the excavated materials for the road and the sub-base in the Cross island Road Phase IIA project.”

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1 Plaintiff GPPC then filed its Complaint on August 15, 2014, stating (1) a claim for breach of
2 contract, and (2) alternatively for judicial review, based on DPW's denial of an equitable
3 adjustment under section 17 of the Contract.

4 The Government now brings the present partial motion to dismiss Plaintiff GPPC's first
5 cause of action pursuant to NMI Rule of Civil Procedure 12(b)(1) because Plaintiff GPPC has failed
6 to exhaust its administrative remedies as required by the administrative code. The Government
7 asserts that Plaintiff GPPC's breach of contract claim was not submitted to the administrative
8 agency because the claim brought to the Secretary and then the Director was a dispute over contract
9 interpretation, not breach of contract.

10 Plaintiff GPPC contends that the disagreement over contract interpretation for the equitable
11 adjustment and a breach of contract claim are one in the same and therefore, the proper
12 administrative procedures were followed when Plaintiff GPPC brought the request to the Secretary
13 and then to the Director.

14 **LEGAL STANDARD**

15 NMI Rule of Civil Procedure 12(b)(1) permits dismissal of a case where a court lacks
16 jurisdiction over the subject matter. *Atalig v. Commonwealth Election Comm'n*, 2006 MP 1 ¶ 16.
17 The court must accept as true all the complaint's undisputed factual allegations and construe the
18 facts in the light most favorable to plaintiff' *Id.* If the court lacks jurisdiction, it has no authority to
19 enter judgment and must dismiss the case. *Id.* (internal citations omitted).

20 **DISCUSSION**

21 The pivotal issue underlying the Government's motion to dismiss is whether Plaintiff GPPC
22 submitted its claim to the above-mentioned governmental agency.

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1 **A. PLAINTIFF GPPC’S COMPLIANCE WITH DISPUTE PROVISION**

2 The Government asserts that this Court lacks jurisdiction over Plaintiff GPPC’s breach of
3 contract claim because the breach of contract claim was never brought before the Director as
4 required by current statutory authority.¹ The Court disagrees.

5 Current administrative regulations provide “[a]ny dispute between the government and a
6 contractor relating to the performance, interpretation of or compensation due under a
7 contract...must be filed in writing with the P&S Director and the official with the expenditure
8 authority within ten calendar days after knowledge of the facts surrounding the dispute.” NMIAC §
9 70-30.3-520. The NMIAC defines a dispute as “a disagreement concerning the legal rights and
10 obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a
11 neutral third party for resolution.” NMIAC § 70-30.3-40(f).

12 Moreover, the NMI Supreme Court has defined an equitable adjustment as “changes made
13 to a contract to reflect a change in the scope of the work performed.” *Tano Group Inc., v.*
14 *Department of Public Works, et. al.*, 2009 MP 18 26. The Court has also defined a breach of
15 contract as the “non-performance of any contractual duty of immediate performance.” *Rosario v.*
16 *Camacho*, 2001 MP 3 ¶ 95 (citing *Bradshaw v. Camacho*, 1 CR 165, 175 (Dist. Ct. 1981)).

17 Here, the Government’s argument seems to suggest that Plaintiff GPPC should have used
18 the specific language “breach of contract” when it submitted its dispute to the Director.² However,
19 it would appear that an underlying assertion of Plaintiff GPPC’s request to the Director for an
20 equitable adjustment was also the assertion that it was due the equitable adjustment under the

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22 ¹ The Court will also note that both parties rely heavily on authority for judicial review cases. However, this reliance is
in error. As will be discussed below, judicial review cases are inherently different than a direct claim for breach of
contract and as such, the judicial review caselaw cited to by both parties is not instructive.

23 ² The Court also rejects the Government’s contention that Plaintiff GPPC should have first requested an equitable
adjustment and then after being denied the adjustment, must then file another claim with the Director asserting a breach
of the contract. This procedure seems irrational and would be inefficient for both parties.

1 contract, and the denial of the adjustment was in breach of the contract. Just because Plaintiff
2 GPPC did not specifically use this legal terminology does not mean that these assertions were not
3 included in the original dispute.

4 Moreover, Plaintiff GPPC's actions in submitting an equitable adjustment, and its actions
5 thereafter, tend to show that it was treating its claim as a breach of contract claim. This is
6 illustrated by Plaintiff GPPC's compliance with Section 20 of the Contract. Section 20 requires
7 bringing a claim for an equitable adjustment to the Contracting Officer and then awaiting the
8 Contracting Officer's decision. Plaintiff GPPC complied with this section and then appealed the
9 decision to the Secretary and the Director pursuant to Section 17 of the Contract. These actions
10 tend to show that Plaintiff GPPC's claim for an equitable adjustment was the same as a claim for
11 breach of contract.

12 For these reasons, Plaintiff GPPC did utilize all of the available administrative remedies
13 required under the contract; therefore, Plaintiff GPPC is now allowed to bring its breach of contract
14 claim for failure to grant the equitable adjustment in this Court.

15 **B. JUDICIAL REVIEW CLAIM**

16 In addition to its breach of contract claim, Plaintiff GPPC also includes a “cause of action”
17 for judicial review of a final agency action. For the reasons discussed below, the inclusion of this
18 matter in Plaintiff GPPC’s complaint is improper and as such, is dismissed.

19 Rule 41(b) of the Rules of Civil Procedure allows for the dismissal of a claim based upon a
20 plaintiff’s failure to comply with court rules or a court’s order. Although the rule requires that the
21 defendant file the motion to dismiss, the Rule has long been interpreted to permit courts to “dismiss
22 actions sua sponte for a plaintiff’s failure to...comply with the rules of civil procedure or court’s
23 orders.” *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003); *see also Nasious v. Two*

1 *Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2003), *Hells Canyon Preservation*
2 *Council v. United States Forest Service*, 403 F.3d 683, 689 (9th Cir. 2005).³ The Northern Mariana
3 Islands Rules of Procedure for Administrative Appeals require that a petition for judicial review
4 follow a specific form detailed in the rules. NMI R. P. Admin. 2.

5 Here, Plaintiff GPPC included the "cause of action" for judicial review in its complaint,
6 which is improper under the current administrative appeals rules. Seeking judicial review must be
7 done in the form of a petition, and must include the necessary information prescribed in the
8 administrative appeals rules. Plaintiff GPPC's failure to abide by these rules now allows this Court
9 to dismiss the judicial review "claim" from the Complaint. Therefore, Plaintiff GPPC's inclusion of
10 the judicial review issue in its complaint is dismissed.⁴

11 **CONCLUSION**

12 For the foregoing reasons, the Government's partial motion to dismiss Plaintiff GPPC's
13 breach of contract claim is hereby DENIED, and Plaintiff GPPC's judicial review "claim" is
14 dismissed.

15 **IT IS SO ORDERED** this 14th day of September, 2015.

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17 /s/
ROBERTO C. NARAJA, Presiding Judge

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22 ³ “[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance.”
23 *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2006 MP 9 ¶ 7
n.3)).

24 ⁴ This dismissal does not necessarily bar Plaintiff GPPC from bringing a petition for judicial review at a later time so
long as it is done in the correct format and not barred by any other issues.