

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 12-353C

(Filed: February 8, 2013)

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J.C.N. CONSTRUCTION, INC., )  
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 Plaintiff, )  
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 v. )  
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 UNITED STATES, )  
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 Defendant, )  
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ORDER

Pending before the court is plaintiff’s application for fees and other expenses under the Equal Access to Justice Act (“EAJA”), filed November 27, 2012, and defendant’s Motion to Dismiss Without Prejudice Plaintiff’s Premature Application Pursuant to EAJA, filed December 26, 2012. Also pending are plaintiff’s response to defendant’s motion, filed January 2, 2013, and defendant’s reply, filed January 14, 2013. Defendant argues that plaintiff’s application for fees and expenses pursuant to EAJA is premature and should be dismissed without prejudice.

Under EAJA, “[a] party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses. . . .” 28 U.S.C. § 2412(d)(1)(B). This court issued an order and opinion under seal on October 29, 2012 determining liability, but has not yet ruled on damages. Therefore, no final judgment has been issued, and plaintiff’s EAJA application is premature. *See, e.g., Martin Const., Inc. v. United States*, 09-236C, 2012 WL 2476794, at \*1 (May 15, 2012); *White Buffalo Const., Inc. v. United States*, 101 Fed. Cl. 1, 23 (2011) (“[A] request for costs under the Equal Access to Justice Act is premature if made prior to final judgment in the case, and the appropriate action by the Court is to dismiss the request, without prejudice.” (citing *M.A. DeAtley Constr., Inc. v. United States*, 71 Fed. Cl. 370, 372 n. 1 (2006))).

Accordingly, defendant’s motion to dismiss plaintiff’s EAJA application is GRANTED. Plaintiff’s application is dismissed without prejudice, and plaintiff may re-file its EAJA application when it becomes timely.

It is so ORDERED.

s/ Charles F. Lettow  
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Charles F. Lettow  
Judge