

Government of the District of Columbia

CONTRACT APPEALS BOARD

717 14TH STREET, N.W., SUITE 430
WASHINGTON, D.C. 20005



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DATE: December 17, 1991

TO: Jerry L Hunter, Esquire
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Washington, D.C. 20001

Nancy Hapeman
Assistant Corporation Counsel
613 G Street, N.W., Room 916
Washington, D.C. 20001

SUBJECT: CAB No. D-868, Appeal of Tensas Enterprises

Attached is a copy of the Board's opinion in the above-referenced matter.

A handwritten signature in cursive script, reading "Rose M. Gillison", written over a horizontal line.

ROSE M. GILLISON
Clerk to the Board

Attachment

RMG/mjh

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

APPEAL OF:

TENSAS ENTERPRISES)	
)	CAB No. D-868
Under Contract No. 6508-AC-68-0-6-LR)	

For the Appellant: Jerry L. Hunter, Esquire. For the Government: Lorilyn Simkins and Nancy Hapeman, Assistants Corporation Counsel.

Opinion by Administrative Judge Terry Hart Lee, with Administrative Judges Zoe Bush and Benjamin B. Turner concurring.

OPINION

On November 13, 1986, the Department of Administrative Services (DAS) awarded the contract referenced above to the appellant, Tensas Enterprises. (Exhibit 1)¹ Appellant was awarded Items 1a and 1b of the aggregate award group, which covered estimated quantities of 60-lb. and 100-lb. cylinders of propane gas for the D.C. Community Health and Hospital Administration. The term of the contract was from November 13, 1986 through September 30, 1987.

By letter dated November 13, 1989, counsel for appellant wrote to the Director, DAS, and asked whether the government intended to honor the contract because the government had never requested the appellant's services. (Exhibit 2) On January 5, 1990, appellant's counsel again wrote to DAS requesting whether the government intended to honor the contract.² (Exhibit 3) By letter dated January 26, 1990, the Director, DAS responded to appellant's counsel, advising him that the contract had expired on September 30, 1987, and that the estimated quantities of the contract did not materialize. (Exhibit 4)

¹All exhibits referenced herein are to the Motion of the District of Columbia To Dismiss For Lack Of Jurisdiction And Motion To Extend The Time To Submit An Appeal File, filed January 28, 1991.

²Appellant counsel's letter states that he had written twice to DAS regarding the subject contract. However, the government has submitted only one letter which pre-dates the January 5, 1990, letter.

- 2 -

On September 28, 1990, appellant filed with this Board a complaint for breach of contract. On January 28, 1991, the District of Columbia (District) filed a Motion to Dismiss the complaint.³ Appellant did not respond to the Motion to Dismiss.⁴

In its Motion to Dismiss, the respondent argues, in the alternative, that this Board lacks jurisdiction over the subject matter of this appeal because appellant failed to exhaust its administrative remedies or because appellant failed to file a timely appeal from a decision by the Director, DAS. 11A D.C. Code §§1-1188.5 and 1-1189.4 (1987).

This Board agrees with the respondent's argument. Section 1-1188.5(a) of Title 11A, D.C. Code, states:

All claims by a contractor against the District government arising under or relating to a contract shall be in writing and shall be submitted to the Director for an informal hearing and decision.

In furtherance of this statutory provision, the implementing regulations found at 27 DCMR §§3800, *et seq.* provide the contractor with claims resolution procedures prior to filing an appeal with this Board. *Id.* §§3803 to 3806.

Thus, it is clear that the statute and its implementing regulations require that the contractor first file a claim with the Director, DAS before proceeding with an appeal to the Board. This is so because the Board's jurisdiction is derived either from a timely appeal of the Director's final decision or a timely appeal from the Director's failure to issue a final decision on the claim within the requisite time period. 11A D.C. Code §§1-1188.5(d) and 1-1189.4(a). See Paragon Energy Corp. v. United States, 227 Ct. Cl. 176, 645 F.2d 966 (1981); Cox & Palmer Construction Corp., VACAB No. 3352, 91-3 BCA ¶24,144; Roubin & Janeiro of Washington, D.C., Inc., CAB No. D-818, 4 D.C. CAB 715; Diversified Resources, Inc., D.C. CAB (April 20, 1987). Absent a claim, no decision is possible; and therefore, there is no basis for the Board's jurisdiction.

In this matter, appellant also has not complied with the statutory and regulatory requirement for filing a proper claim. The November 1989 and January 1990 letters from appellant's counsel are merely letters of inquiry of the government's intent to honor the contract. By no stretch of the imagination can these letters be deemed to

³Apparently, appellant did not receive a copy of the government's motion to dismiss. The government's counsel forwarded another copy to appellant on September 25, 1991.

⁴Appellant did not respond, either, to the motion to dismiss after it was sent again on September 25, 1991.

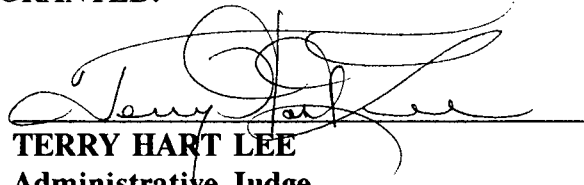
- 3 -

comply with the requirements for a proper claim. 27 DCMR §3803.3. Concomitantly, the Director's January 26, 1990, response cannot reasonably be considered to be a final decision. Id. §3806.7. Consequently, the prerequisite for this Board's jurisdiction simply does not exist.


Because the record is replete with evidence that the appellant has not complied with the statutory prerequisites, we need not reach the issue of timeliness.

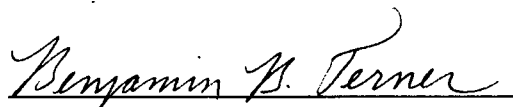
For the reasons set forth herein, and based upon the facts and circumstances extant, the government's motion to dismiss is GRANTED.

DATE: December 12, 1991


TERRY HART LEE
Administrative Judge

CONCUR:


ZOE BUSH
Chief Administrative Judge


BENJAMIN B. TURNER
Administrative Judge