

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

APPEAL OF:

EBONÉ, INC. )

Under Contract Nos. 88-0029-AA-2-0-KA, )

89-0023-AA-2-0-KA, 89-0042-AA-2-0-KA, )

90-0038-AA-2-0-KA, 90-0041-AA-2-0-KA, )

90-0053-AA-2-0-KA, 90-0083-AA-2-0-KA, )

90-0112-AA-2-0-KA, 91-0151-AA-2-0-KA, )

91-0123-AA-2-0-KA, 91-0054-AA-2-0-KA, )

91-0165-AA-2-0-KA and 91-0109-AA-2-0-KA )

CAB No. D-922

For the Appellant: Mitchell Barry Rosenfeld, Esquire. For the Government:  
Michael L. Alston, Assistant Corporation Counsel.

Opinion by Administrative Judge Cynthia G. Hawkins-León, with Administrative  
Judges Zoe Bush and Terry Hart Lee concurring.

OPINION AND ORDER ON MOTION TO DISMISS

The Board has pending before it the motion of the District to dismiss the above-captioned appeal on the ground that Eboné, Inc. ("Eboné" or "Appellant") has failed to exhaust its administrative remedies pursuant to section 805 of the District of Columbia Procurement Practices Act of 1985 ("PPA"), D.C. Code § 1-1188.5 (a), and therefore, the Board does not have jurisdiction to decide this matter. For the reasons set forth below, the District's motion is **GRANTED**, and this case is **DISMISSED**, without prejudice.

Appellant filed a complaint with the Board on June 29, 1992. In its complaint, Appellant appeals the April 28, 1992 letter issued by the Director of the Department of Public Works ("DPW"). (A.F. 1.1). The Director of DPW also serves as the Department's Contracting Officer. (A.F. 3.4). In her April 28, 1992 letter, the DPW Director stated that, due to several instances of improper behavior, a specific principal of Eboné was prohibited

"from all interface with personnel of the Design, Engineering and Construction Administration (DECA) for a period of one year from the date of this letter." The letter cited Article 10, Section E of the General Provisions of the Standard Contract Provisions as the authority for her action.<sup>1/</sup>

The District filed the appeal file on August 7, 1992. The appeal file contains various documents referencing several separate instances of what must be interpreted as questionable behavior by this principal of Eboné. (See A.F. 2.1 through 2.19). Concurrently, the District filed a motion to dismiss for Appellant's failure to exhaust its administrative remedies as required by D.C. Code § 1-1188.5(a) and its implementing regulations at 27 DCMR §§ 3803 and 3804 (1988).

In its opposition to the motion to dismiss, filed August 14, 1992, Appellant states that, due to the expansive nature of the DPW Director's letter, the scope was not limited to any specific contract(s) and was outside of the scope of any existing contract. Appellant contends that the directive by the DPW Director was a general prohibition placed upon Eboné. Appellant thus concludes that it was not required to file a claim with the Director of DAS prior to its filing with the Board.<sup>2/</sup>

The Board agrees with the Appellant that the directive issued by the DPW Director, which amounted to a one-year restraining order against the principal, was indeed a general prohibition. The general nature of the directive does not, however, remove it from the purview of the thirteen (13) contracts that Eboné has with the District. Therefore, the Board holds that the Appellant is required to pursue its claim in accordance with the requirements of the PPA.

This Board has consistently held that in order to invoke the jurisdiction of the Board, a contractor must first exhaust its administrative remedies with the Director of the Department of Administrative Services pursuant to D.C. Code §§ 1-1188.5(a) and 1-1189.3(2). RDP Development Corporation, CAB No. D-928, 6 P.D. 5154 (May 13, 1993); Impex International Industries, CAB No. 890, 40 DCR 4400 (May 15, 1992); Mid-Atlantic Service Industries, Inc., CAB No. 826, 39 DCR 4418 (February 11, 1992); Tensas Enterprises, CAB No. D-868, 39 DCR 4362 (December 12, 1991).

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<sup>1/</sup>The Board questions whether the letter issued by the DPW Director on April 28, 1992 meets the requirements of contracting officer's final decision pursuant to the Procurement Regulations. See 27 DCMR § 3803.5 (1988).


<sup>2/</sup>The Board notes that were this the case, Appellant would not have a justiciable claim before the Board. See D.C. Code § 1-1189.3.

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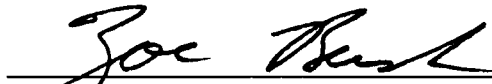
Wherefore, based on the foregoing, the District's motion to dismiss is **GRANTED**. Appellant is directed to file a claim with the Director of the Department of Administrative Services pursuant to D.C. Code § 1-1188.5(a) if Appellant wishes to further pursue an appeal with the Board. This appeal is therefore **DISMISSED**, without prejudice.


So **ORDERED**.

DATE: October 6, 1993

  
CYNTHIA G. HAWKINS-LEÓN  
Administrative Judge

CONCUR:

  
ZOE BUSH  
Chief Administrative Judge

  
TERRY HART LEE  
Administrative Judge