

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

IMPEX INDUSTRIES, INC.

Under Contract No. 1072-AA-03-FC

)
) CAB No. D-953
)

For the Appellant: Mr. Tao Eniola, President. For the Government: Michael Wasserman, Assistant Corporation Counsel.

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

OPINION AND ORDER ON MOTION TO DISMISS

On January 14, 1994, Impex Industries, Inc. ("Impex" or "Appellant") filed an appeal of the Department of Administrative Services' ("DAS") "refus[al] to pay for services rendered" pursuant to Contract No. 1072-AA-03-FC. Impex seeks to recover \$32,994.00 as the amount owed by for services rendered, plus \$250,000.00 for "consequential" damages, and \$250,000.00 for "grievous loss of business," plus interest.

The District filed a Motion to Dismiss on February 22, 1994 for Appellant's failure to exhaust its administrative remedies. Appellant did not file a response to the District's motion.

The contract, as modified, was for moving and hauling services for various District Government agencies from August 6, 1992 through December 3, 1993. District's Motion to Dismiss, Attachment A. On May 20, 1993, a "Cure Letter" was issued to Appellant by the Contracting Officer of DAS for deficient services from March 26, 1993 through April 2, 1993 for the Department of Human Services. The "Cure Letter" listed specific contract provisions with which Impex failed to comply. Impex was given ten (10) days to provide a written response. Id., Attachment B. It is unclear whether Impex responded within the allotted time frame, but no such response has been supplied to the Board. On October 22, 1993, the Contracting Officer for DAS issued a "Notice to Show Cause" why the contract should not be terminated for default due to performance deficiencies that occurred on or about October 15, 1993 for the Department of Human Rights and Minority Business Development. Again, specific deficiencies pursuant to the contract's terms were listed. Id., Attachment C. On November 10, 1993, Impex responded to the "Notice to Show Cause." On November 17, 1993, an amended response was submitted. Id., Attachment E. On February 18, 1994, Impex submitted

a demand for payment to the Director of DAS for services rendered.

For the reasons stated below, the appeal is dismissed, without prejudice.

The jurisdiction of the Board is established in section 903 of the Procurement Practices Act of 1985, D.C. Code § 1-1189.3, which states:

The Board shall be the exclusive hearing tribunal for, and shall have jurisdiction to review and determine de novo: ...

(2) Any appeal by an aggrieved party from a final decision by the Director [of DAS] which is authorized by this chapter.

(emphasis added).

The Procurement Regulations, by reference to the PPA, state that, for claims under \$50,000, the Director is allowed sixty (60) calendar days to issue a decision and may, under certain circumstances, extend this time an additional sixty (60) days.¹ If no decision has been rendered within the allotted period, the contractor may treat the claim as "deemed denied" by the Director and an appeal may be filed with this Board. See D.C. Code § 1-1188.5(b); 27 DCMR §§ 3806.4 thru 3806.6 (July 1988).

The Board's Rules and Regulations, intended to implement the PPA and the Procurement Regulations, state as follows:

200.1 An appeal by a contractor of a final decision of the director of the Department of Administrative Services ... shall commence by the contractor filing with the Board an original and four (4) copies of a notice of appeal.

200.2 The notice of ~~dispute~~ ^{appeal} shall be filed:

(a) In a contract dispute, no later than ninety (90) days after the

¹ It is important to note that although Impex filed a demand letter with the Director of DAS for monies owed in the amount of \$24, 677.00, in its complaint filed with the Board, the relief requested includes a demand for \$32,994.00 plus \$250,000 for "consequential damages" and an additional \$250,000.00 for "grievous loss of business" for a total of \$532,994.00. District's Motion to Dismiss, Attachment F; Appellant's Complaint.

correct prior to OLR publication if possible

contractor received the decision of the director, or the time period for the director to issue a decision has expired; ...

(emphasis added). 36 DCR 2700 (April 21, 1989). It is clear, based on the record before the Board, that Impex's "appeal" is not in compliance with the above-cited provisions of the PPA and procurement regulations.

In addition to the above, and as a prerequisite to filing with the Director, Appellant is required to

attempt to resolve all disputes by discussion and agreement with the contracting officer before filing a written claim.

If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the contracting officer....

[T]he contracting officer shall issue a decision on the claim within sixty (60) calendar days after the receipt of the claim....

See 27 DCMR §§ 3803.1, 3803.2, 3803.5 (1988). There is no factual proof that Appellant has exhausted this particular administrative remedy either.

As previously stated, Appellant filed its appeal with the Board on January 14, 1994: "appealing" DAS' failure to pay for services rendered. Appellant did not file a claim with the Director of DAS until February 18, 1994, without first filing a claim with the Contracting Officer -- over a month after filing its appeal with the Board.

In light of Appellant's failure to exhaust its administrative remedies, the Board is without jurisdiction to hear Appellant's claim. See District Paving Corporation, CAB No. D-954, April 6, 1994, 7 P.D. 5789; Impex International Industries, Inc., CAB No. D-890, May 15, 1992, 40 DCR 4400; Impex International Industries, Inc., CAB Nos. D-855, D-858, May 29, 1991, 39 DCR 4224.²

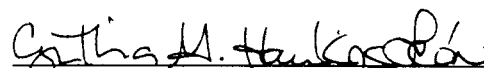
² Impex is reminded that this is the third appeal that it has filed with the Board within the last four years without first exhausting its administrative remedies.

Therefore, it is hereby

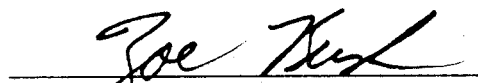
ORDERED, that the Motion of the District of Columbia to Dismiss the Appeal is **GRANTED**, and it is

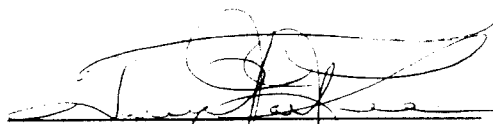
FURTHER ORDERED, that the appeal is **DISMISSED**, without prejudice.

DATE: April 15, 1994


CYNTHIA G. HAWKINS-LEÓN
Administrative Judge

CONCUR:


ZOE BUSH
Chief Administrative Judge


TERRY HART LEE
Administrative Judge