## GOVERNMENT OF THE DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

## APPEAL OF:

URBAN	SERVICE	SYSTEMS	CORPORATION	)			
				)	CAB	No.	D-901
Under	Contract	No. 0	120-RD-PW	)			

## OPINION AND ORDER ON MOTION TO DISMISS

The Board has pending before it the motion of the District of Columbia to dismiss the above-captioned appeal on the ground that the Board lacks jurisdiction in this matter because the appeal filed by Urban Services Systems Corporation ("Urban" or "Appellant") was untimely filed. The District contends that the instant appeal was not filed with the Board in accordance with the requirements of section 904 of the District of Columbia Procurement Practices Act of 1985 ("PPA"), D.C. Code § 1-1189.4, and Board Rule 200.2(a), 36 DCR 2700 (1989). For the reasons set forth below, the District's motion is DENIED.

In its appeal, Urban contends that the District of Columbia has breached Contract No. 0120-RD-PW by the Contracting Officer's refusal to stop a practice of taking away work that was being performed by Urban in accordance with the terms of the contract and giving this work to another company. Specifically, Urban alleges that the size of containers to be utilized by Urban in its trash collection duties resulted in work being transferred to another collection firm. As evidence, Appellant supplied a series of correspondence from its President and various legal counsels to the Department of Administrative Services and the Office of the Corporation Counsel.

On December 7, 1990, the contracting officer issued an explanatory letter to Urban recounting the District's actions. The Appellant interpreted this letter to be the contracting officer's final decision and filed a claim with the Director of the Department of Administrative Services ("DAS") on January 24, 1991. According to the Appellant, no decision was rendered by the Director. Thus, in accordance with D.C. Code § 1-1185.5(c), the Appellant could have deemed the claim denied by the Director by the end of April 1991 and filed an appeal of this denial with the Board. The instant appeal was filed with the Board on December 31, 1991 when, some eight months later, no decision had been issued by the Director of DAS.

The issue of the timeliness of an appeal to the Board when there has been no decision issued by the Director of DAS was

<sup>1/</sup>In the Board's opinion, this letter does not meet the requirements of a contracting officer's final decision as established in the procurement regulations. 27 DCMR § 3803.5 (1988).

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extensively discussed by this Board in A.S. McGaughan Co., Inc., CAB No. D-926, 40 DCR 4855 (December 10, 1992). In McGaughan, the Board correctly interpreted the intent and purpose of the PPA and its attendant regulations not to deny or to limit a contractor from filing an appeal with the Board in cases where the Director of DAS has not rendered a decision. In this instance, the statute permits, but does not require, a contractor to commence an appeal if a decision is not issued by DAS within ninety (90) days. In essence, a contractor can want ad infinitum for a written DAS decision; there is no time limit for an appeal to the Board, if there is no written DAS decision.

Therefore, the District's motion to dismiss is **DENIED**; and it is hereby

ORDERED, in accordance with Rule 204, that the District file its Appeal File, within 30 days of receipt of this Order; and it is

FURTHER ORDERED, in accordance with Rule 203.3, that the Appellant shall file its complaint with the Board, within 30 days of receipt of this Order; and it is

FURTHER ORDERED, in accordance with Rule 203.3, that the Appellant supplement the District's appeal file, if necessary; and it is

FURTHER ORDERED, that in accordance with Rule 205, the District file its answer to the Appellant's complaint.  $^{2}$ 

DATE: October 6, 1993

CYNTHIA G. HAWKINS-LEÓN Administrative Judge

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It is noted by the Board that, when this appeal was filed in December 1991, the Appellant elected an accelerated proceeding pursuant to Rule 216. In light of the period of time that has lapsed since Appellant's original filing, the Board respectfully requests that the Appellant notify the Board whether it still elects to follow this procedure.