

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:

GATEKEEPERS INTERNET MARKETING, INC.)	
)	
Under Contract Nos. PODS-2003-C-615-04)	CAB No. D-1372
PODS-2003-C-920-27)	
PODS-2003-C-037-02)	

ORDER ON MOTION TO DISMISS

Filing ID 44793107

Before the Board is the District's motion to dismiss the present action based on the following grounds: (1) the Appellant failed to state a claim upon which relief may be granted; and (2) this appeal is barred by the statute of limitations. (Mot. to Dismiss 1.)¹ The Appellant opposes the District's request for dismissal. (Appellant's Resp. to District's Mot. to Dismiss 1.)

By way of background, the Appellant contracted with the District to provide information technology services under Contract Nos. PODS-2003-C-615-04, PODS-2003-C-920-27, and PODS-2003-C-037-02. (Revised Joint Prehearing Statement 1.) Appellant provided services to the District from December 2004 to September 2008. (*Id.* at 2.) The Appellant alleges that the District failed to pay its company for goods and services accepted by the District during this time period. (*Id.* at 1.) The parties concur that the Appellant submitted a contract claim to the Contracting Officer ("CO") against the District arising from the aforementioned contracts, and that the CO issued a final decision denying the claim on June 20, 2009. (*Id.* at 2-3.) It is also undisputed that, on November 19, 2009, Appellant filed the present action with the Board to appeal the CO's June 20, 2009, final decision. (*Id.* at 3.)

Based upon the foregoing facts, the District asserts that the Board does not have jurisdiction to hear the present appeal because it is barred by the 90 day statute of limitations period applicable to contractor claims against the District after the CO's final decision is issued, as set forth under D.C. CODE § 2-360.04(a) (2011). (District's Mot. to Dismiss 3-4.) The Appellant, on the other hand, does not deny the applicability of a statutory period within which an appeal of a claim must be filed with the Board, but rather seemingly requests that the Board retain jurisdiction of this matter because, after receiving the CO's final decision, the Appellant allegedly expended additional time attempting to negotiate a settlement with the District before filing its appeal with the Board. (Appellant's Resp. to District's Mot. to Dismiss 1.)

Upon consideration of the District's motion to dismiss, the Appellant's response, and the entire record, the Board finds that the Appellant's appeal is time barred. The statute discussed herein expressly provides that a contractor seeking to appeal a CO's final decision on a contract claim has a period of 90 days within which it may file such an action with the Board after the

¹ The Board's June 1, 2012, Prehearing Order instructed the District to file a motion to dismiss regarding the present statute of limitations ground, and ordered the Appellant to file a response thereto, based upon the District's representation during the parties' May 24, 2012, prehearing conference that this present action is time barred.

contractor receives the CO's final decision on its claim. D.C. CODE § 2-360.04(a) (2011).² The Board has expressly recognized this 90 day period as a statutory time limitation within which an appeal must be filed with the Board. *E.g., Claim of Chief Procurement Officer*, CAB No. D-1182, 50 D.C. Reg. 7465 (Nov. 29, 2002) (articulating the same 90 day statute of limitation period for filing claims with the Board after receipt of the contracting officer's final decision, under former D.C. CODE § 2-309.04(a)).

In the present action, the CO issued a final decision on June 20, 2009, and the Appellant filed a complaint with the Board on November 19, 2009, which was 152 days after the CO's final decision was issued. Therefore, the Appellant's appeal was filed well beyond the 90 day statute of limitations period set forth in D.C. CODE § 2-360.04(a), and, consequently, the Board lacks jurisdiction to decide this appeal.

Additionally, as the second basis for requesting dismissal of this matter, the District asserts that the Appellant's action should be dismissed because it fails to state a claim pursuant to Rule 12(b)(6) of the D.C. Superior Court Rules of Civil Procedure. (District's Mot. to Dismiss 1.) However, having found that the Board cannot exercise jurisdiction over this appeal because of the statute of limitations applicable to a contractor's right of appeal to the Board, we find it unnecessary to address this secondary issue as an alternative basis for dismissal.

For the foregoing reasons, the District's motion is granted, in part, and the present action is dismissed with prejudice.

SO ORDERED.

Date: June 13, 2012

/s/ Monica C. Parchment
MONICA C. PARCHMENT
Administrative Judge

CONCURRING:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

/s/ Maxine E. McBean
MAXINE E. MCBEAN
Administrative Judge

² The relevant portion of D.C. CODE § 2-360.04(a) provides that:

" . . . within 90 days after the date of receipt of a decision of the contracting officer, the contractor may appeal the decision to the Board by filing a complaint."

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