

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEALS OF:

DOXA, INC.)	
)	
Under Contracts regarding)	CAB Nos. D-1284 and D-1285
D.C. PSC Formal Case Nos. 766, 945,)	
982, 991, 1002, 1009, 1017, 1023, and 1026)	

For the Appellant DOXA, Inc.: Mr. Karl Richard Pavlovic, *pro se*. For the District of Columbia Office of People's Counsel: Barbara L. Burton, Esq., Assistant People's Counsel.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

OPINION

LexisNexis Filing ID 11960520

Appellant DOXA, Inc., performed consulting services for the District of Columbia Office of People's Counsel relating to various cases before the District of Columbia Public Service Commission. Under the contracts between DOXA and the Office of People's Counsel, DOXA was to perform its consulting services and invoice People's Counsel for its work. People's Counsel was to pay DOXA on a monthly basis. People's Counsel paid the principal amounts of the invoices but at least some of the payments were paid later than stipulated in their contracts. DOXA seeks interest penalties for those late payments pursuant to the Quick Payment Act ("QPA"), D.C. Code §§ 2-221.01 to 2-221.06 (2001), but People's Counsel refused to pay interest penalties. DOXA appealed the denial of its claim for interest penalties. People's Counsel has filed a motion to dismiss, contending that the Office of People's Counsel is not subject to the Quick Payment Act or the Procurement Practices Act. We agree with People's Counsel that the Quick Payment Act does not apply to it because it enjoys the same exemption as the Public Service Commission. For the same reason, People's Counsel, like the Public Service Commission, is not subject to the Procurement Practices Act because of the specific exemptions found at D.C. Code §§ 2-301.04 and 2-303.20(1). Accordingly, we dismiss the appeals.

BACKGROUND

DOXA performed consulting services for the Office of People's Counsel relating to Public Service Commission Formal Case Nos. 766, 945, 982, 991, 1002, 1009, 1017, 1023, and 1026 before the Public Service Commission from 1999 through 2005. DOXA payment invoices submitted to the Office of People's Counsel were paid, although many payments were made more than 30 days after the invoice date. In September 2005, DOXA submitted claims to the People's Counsel for interest penalties pursuant to the Quick Payment Act on the invoices which were paid late. People's Counsel

made no decision respecting the QPA claims, and on December 23, 2005, DOXA filed notices of appeal with the Board based on the People's Counsel's deemed denials of its claims. In CAB No. D-1284, DOXA claims QPA interest penalties of \$2,482.27 and interest upon unpaid interest penalties of \$49.48, and in CAB No. D-1285, DOXA claims QPA interest penalties of \$35,117.55 and interest upon unpaid interest penalties of \$2,584.64. People's Counsel filed motions to dismiss in each of the cases and the Board has heard the arguments of the parties during status conferences.

DISCUSSION

DOXA's claims for penalty interest are based upon D.C. Code § 2-221.04(a) which provides in relevant part:

- (a)(1) Claims for interest penalties which a District agency has failed to pay in accordance with the requirements of §§ 2-221.02 and 2-221.03 shall be filed with the contracting officer for a decision. Interest penalties under this subchapter shall not continue to accrue: (A) after the filing of an appeal for the penalties with the Contract Appeals Board; or (B) for more than one year.
- (2) The contracting officer shall issue a decision within 60 days from the receipt of any claim submitted under this subchapter.
- (3) Within 90 days from the receipt of a decision of the contracting officer, the contractor may appeal the decision to the Contract Appeals Board.
- (4) The contractor shall file a claim for interest penalties and any amendments to such claim within 90 days after the principal is paid

The term "District agency" as used in section 2-221.04(a)(1), is defined in the "Definitions" section of the QPA, D.C. Code § 2-221.01, as follows:

- (3) "District agency" means any office, department, division, board, commission, or other agency of the District government, including, unless otherwise provided, an independent agency, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law. For the purposes of this definition, the term "independent agency" means any agency of government not subject to the administrative control of the Mayor and includes, but is not limited to, the Superior Court of the District of Columbia, District of Columbia Court of Appeals, Council of the District of Columbia, Board of Elections and Ethics, Armory Board, Zoning Commission, Convention Center Board of Directors, District of Columbia Board of Education, and Public Service Commission.

This definition of "District agency" includes both dependent agencies – *i.e.*, those under the direct administrative control of the Mayor – as well as independent agencies which are not subject to the direct administrative control of the Mayor. The Public Service Commission is specifically listed as an independent agency.

Section 2-221.02, referenced above in section 2-221.04, establishes which District agencies are required to pay QPA interest penalties, identifies how to compute the interest penalty amounts, and authorizes rules and regulations to be issued by the Mayor for agencies under the Mayor's direct control. This section provides in relevant part (emphasis added):

(a)(1) In accordance with rules and regulations issued by the Mayor of the District of Columbia ("Mayor"), each agency of the District of Columbia government ("District"), *under the direct control of the Mayor*, which acquires property or services from a business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due.

We believe that this subsection make agencies under the direct control of the Mayor subject to QPA interest penalties. Although independent agencies are included in the section 2-221.01(3) definition of "District agency", there is no clear manifestation here that the Council intended to make all independent agencies subject to the QPA interest penalties, particularly those that are exempt from the Procurement Practices Act. Section 2-221.02(b)(1A) states: "Each contract executed pursuant to Chapter 3 of Title 2 shall include in the solicitation a description of the contractor's rights and responsibilities under the chapter." The reference to Chapter 3 of Title 2 must be a reference to the Procurement Practices Act, which is found at Unit A of Chapter 3 of Title 2 of the D.C. Code. Thus, contracts executed pursuant to the PPA are subject to the QPA and must include a clause describing the QPA requirements and the contractor's rights and responsibilities under the QPA.

The Mayor's regulations implementing the QPA, 1 DCMR § 1700, support this interpretation. Section 1700.2 states:

Pursuant to section 3 of the [QPA], these rules shall apply to any office, department, division, board, commission or other agency of the District other than an independent agency required either by law, the Mayor or the Council of the District of Columbia (Council), to administer any law or any rule adopted under the authority of a law.

To complete the analysis, we look to see whether People's Counsel is subject to the PPA. The coverage of the PPA is set forth in D.C. Code § 2-301.04 ("Application of Chapter"), which states:

(a) Except as provided in § 2-2-303.20, this chapter shall apply to all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinate to the Mayor, independent agencies, boards, and commissions, but excluding the Council of the District of Columbia, [and] District of Columbia courts

The referenced section 2-303.20, entitled "Exemptions" provides in relevant part that:

(l) Nothing in this chapter shall affect the authority of the District of Columbia Public Service Commission pursuant to Chapter 8 of Title 34.

Thus, the Public Service Commission is not covered by the PPA. A review of Chapter 8 of Title 34 reveals that the Office of People's Counsel is created within the Public Service Commission:

There is hereby established within the Public Service Commission of the District of Columbia, established by § 34-801, an office to be known as the Office of the People's Counsel. The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

D.C. Code § 34-804(a). Because the Office of People's Counsel is created within the Public Service Commission, the Council must have intended that its exemption of the Public Service Commission from the PPA also included the Office of People's Counsel. Since both the Public Service Commission and the Office of People's Counsel are exempt from the PPA, and they are both independent agencies not subject to the direct administrative control of the Mayor, the conclusion follows that neither is subject to the QPA.

In sum, we conclude that the Office of People's Counsel is not subject to the Quick Payment Act and we must dismiss the appeals.

SO ORDERED.

DATED: August 2, 2006

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge