

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

APPEAL OF:

MEDICAL EXTENSION SERVICES, INC. and	)	
INNER CITY HEALTH PROVIDERS, INC.	)	
	)	CAB No. D-937
Under Contract No. JA/90592 and	)	
Grant Nos. 2G0136 and 2G0119	)	

For the Appellant: Allen M. Hutter, Esquire. For the Government: Michael L. Alston, Assistant Corporation Counsel.

Opinion by Administrative Judge Zoe Bush, with Administrative Judges Terry Hart Lee and Jonathan D. Zischkau, concurring.

**OPINION AND ORDER  
ON MOTION TO DISMISS**

Medical Extension Services, Inc. and Inner City Health Providers, Inc. (Appellants) filed a "notice of appeal" with the Board on March 22, 1993, and a complaint on April 12, 1993. Appellants assert that the District of Columbia Department of Human Services (DHS) wrongfully terminated their contract and grants, and therefore they seek to recover damages in the amount of \$200,000.00 plus interest, their costs and attorney fees.

The District of Columbia has moved to dismiss the appeal for lack of jurisdiction and argues that Appellants have failed to exhaust their administrative remedies with the District of Columbia Department of Administrative Services (DAS) pursuant to D.C. Code § 1-1189.4(a).<sup>1/</sup> Appellants have not timely responded to the motion to dismiss.

Nowhere in the notice of appeal or complaint do Appellants reference that their appeal has been filed with the Board in accordance with the provisions of the Procurement Practices Act of 1985 (PPA), D.C. Code §§ 1-1181.1 et seq. Our review of their pleadings leads us to conclude that Appellants have indeed failed to submit a written claim to the Director of DAS pursuant to D.C. Code § 1-1188.5(a) or to appeal to the Board a final decision of the Director pursuant to D.C. Code § 1-1189.3(2). This Board has consistently held, as it must, that in order to invoke the jurisdiction of the Board, a contractor must first exhaust its administrative remedies with the Director of DAS pursuant to D.C. Code § 1-1189.3. Mid-Atlantic Service Industries, Inc., CAB No. D-826, 39 DCR 4418 (1992);

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<sup>1/</sup>On April 28, 1993 the District moved to stay proceedings pending the Board's resolution of the motion to dismiss or in the alternative for a protective order and enlargement of time to file the appeal file. The motion was granted by Board Order dated May 4, 1993.

Tensas Enterprises, CAB No. D-868, 39 DCR 4362 (1991); Edwin O. Abia-Okon, M.D., CAB No. D-856, 39 DCR 4360 (1991); Roubin & Janeiro of Washington, DC, Inc., CAB No. D-818, 39 DCR 4228 (1991); Impex International Industries, Inc., CAB No. D-855, D-858 (Consolidated), 39 DCR 4224 (1991). Thus this "appeal" is premature with respect to Contract No. JA/90592.

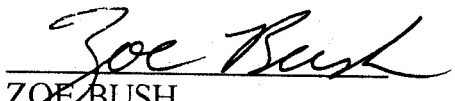
Further with regard to Grant Nos. 2G0136 and 2G0119, those matters may not properly be brought before the Board or the Director of DAS. This is so because the PPA expressly excludes grants from its operation. The PPA provides at D.C. Code § 1-1181.4(d):

This chapter shall apply to every contract, interagency agreement, or intergovernmental agreement for procurement or disposal of goods and services by covered agencies and employees, except contracts or agreements for the receipt or the making of a grant-in-aid or for federal financial assistance.

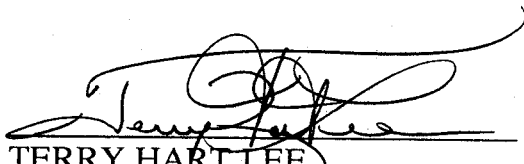
See H Street Development Corporation, CAB No. I-002, 6 P.D. 5239 (July 7, 1993).

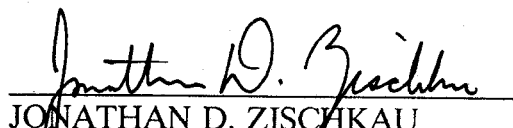
Therefore, the District's motion is **GRANTED**. With regard to Grant Nos. 2G0136 and 2G0119, this appeal is hereby **DISMISSED**, with prejudice. With regard to Contract No. JA/90592, this appeal is **DISMISSED**, without prejudice. Appellants are directed to file a claim with the Director of DAS pursuant to D.C. Code § 1-1188.5(a) if they wish to further pursue an appeal with this Board.

DATE: August 6, 1993

  
ZOE BUSH  
Chief Administrative Judge

CONCUR:

  
TERRY HART LEE  
Administrative Judge

  
JONATHAN D. ZISCHKAU  
Administrative Judge

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