

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DISMISSED FOR LACK OF JURISDICTION: April 11, 2005

GSBCA 16606

METRO RECYCLING COMPANY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Charles Francis, President of Metro Recycling Company, Cincinnati, OH, appearing for Appellant.

Jan Stephenson Cohn, Office of Regional Counsel, General Services Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **PARKER**, **NEILL**, and **HYATT**.

PARKER, Board Judge.

The General Services Administration (GSA) moves to dismiss as untimely filed Metro Recycling Company's (Metro's) appeal of a contracting officer's decision in connection with a contract to provide recycling services. We grant the motion and dismiss the appeal.

Background

The contract at issue provided that Metro would pick up recyclable material from a building in Washington, D.C., and then pay GSA for the material according to its weight and type. In mid-2003, Metro asserted that it had been required to load, unload, and store un-recyclable material and sought a credit for that work against the amounts the firm owed GSA for the recyclable material. GSA, for the most part, disagreed with Metro's assertion.

After a largely unsuccessful attempt at mediation, GSA's contracting officer issued a decision on August 3, 2004, issuing a credit to Metro in the amount of \$8685.96. Metro responded on August 10, 2004, with a claim for \$10,085 in additional credits.

On September 24, 2004, the contracting officer issued a final decision denying most of Metro's claim. Delivery of the decision was confirmed by Federal Express to have occurred on September 27, 2004.

Metro appealed the contracting officer's decision to this Board on February 28, 2005, which is 154 days after Metro received the decision.

Discussion

In *D.L. Braugher Co. v. West*, 127 F.3d 1476 (Fed. Cir. 1997), the United States Court of Appeals for the Federal Circuit repeated longstanding statutory rules for filing a timely appeal of a contracting officer's decision:

Following receipt of a contracting officer's final decision, a contractor has ninety days to appeal the decision to the appropriate agency board of contract appeals. 41 U.S.C. § 606. If a timely appeal is not lodged, the contracting officer's decision on the claim "shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency." 41 U.S.C. § 605(b). If no appeal to the Board is taken within the ninety day statutory period set forth in section 606, the Board has no jurisdiction to hear the claim.

Id. at 1480 (footnote omitted); *CWI Consultants & Services v. General Services Administration*, GSBCA 13889, 98-2 BCA ¶ 29,343. The ninety-day deadline is part of a statute waiving sovereign immunity, which must be strictly construed, and the Board has no power to waive it. *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982).

The Board lacks jurisdiction to consider Metro's appeal because the firm did not file its notice of appeal within the statutory ninety-day period. Metro received the contracting officer's decision on September 27, 2004, but did not file an appeal until February 28, 2005, well after the statutory ninety-day period had expired.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION.**

ROBERT W. PARKER
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

CATHERINE B. HYATT
Board Judge