

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Pros Cleaners ) ASBCA No. 59067  
 )  
Under Contract No. W9124E-12-A-0005 )

APPEARANCE FOR THE APPELLANT: Mr. Bruce Webber  
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
Erica S. Beardsley, Esq.  
CPT Ahsan M. Nasar, JA  
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE LOPES  
ON THE GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

Pros Cleaners (appellant) appeals the contracting officer’s final decision (COFD) terminating appellant’s contract for failing to perform laundry services at Fort Polk, Louisiana.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On 7 March 2012, the Army (government) entered into Blanket Purchase Agreement (BPA) No. W9124E-12-A-0005-P00001 with Pros Cleaners for rotational laundry services at Fort Polk, Louisiana. The BPA incorporated by reference the FAR 52.233-1, DISPUTES (JUL 2002) clause. (R4, tab 1 at 1, 22) On 2 August 2012, the government issued BPA Call No. 0001 to Pros Cleaners for \$83,400 to provide rotational laundry services at several locations at Fort Polk (R4, tab 2).

2. On 8 August 2012, the contracting officer issued a COFD terminating Call No. 0001 for cause based on Pros Cleaners failure to perform the required laundry services, citing “paragraph (m), ‘Termination for Cause’ of FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items, of the contract” (R4, tab 6). In fact, such clause was not incorporated into the contract.

3. Also on 8 August 2012, the contracting officer issued BPA Call Modification No. 000101, which terminated Call No. 0001 and authorized payment for 4,800 lbs. of laundry services by Pros Cleaners prior to termination (R4, tab 7). On 10 August 2012, Pros Cleaners provided signed acknowledgement of receipt of a signed copy of the COFD (R4, tab 6).

4. An appeal from the COFD terminating the call was filed with the Board on 13 December 2013 (R4, tab 8).

### DECISION

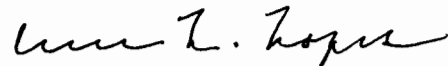
The Disputes clause of the contract provides that a COFD shall be final unless the contractor appeals in accordance with the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109. Section 7104(a) of the CDA requires the contractor to file an appeal to an agency board of contract appeals within 90 days from the date of receipt of the decision of a contracting officer or within 12 months to the U.S. Court of Federal Claims. 41 U.S.C. § 7104(b)(3). Appellant acknowledged receipt of a signed copy of the COFD on 10 August 2012, but did not file this appeal until 13 December 2013, 490 days later (R4, tabs 6, 8). The government moves to dismiss the appeal as untimely (gov't mot. at 2-3). Pros Cleaners responds to the government's motion to dismiss by citing its inexperience with government contracts and problems it allegedly had interacting with the contracting officer (app. mot. at 1). Pros Cleaners also contends that BPA Call Modification No. 000101 "was premature, not contractual and [was] a breach" of the contract because there are no provisions in the contract authorizing terminations of this nature (compl. at 1).

It is factually undisputed Pros Cleaners filed its appeal well beyond 90 days after it received the COFD. The 90-day appeal period is statutory and may not be waived. *Cosmic Constr. Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982). Therefore, the appeal is untimely.<sup>1</sup>

### CONCLUSION

The government's motion to dismiss for lack of jurisdiction is granted.

Dated: 6 August 2014



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CRANE L. LOPES  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

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<sup>1</sup> In light of our decision that the appeal is untimely, we do not consider the argument that there was no termination provision contained in the contract.

I concur



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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



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RICHARD SHACKLEFORD  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 59067, Appeal of Pros Cleaners, rendered in conformance with the Board's Charter.

Dated:

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JEFFREY D. GARDIN  
Recorder, Armed Services  
Board of Contract Appeals