

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Management Resource Associates, Inc.) ASBCA No. 53922
)
Under Contract No. N62470-88-C-6147)

APPEARANCE FOR THE APPELLANT: Mr. Matthew N. Robinson
President

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
Pamela J. Nestell, Esq.
Trial Attorney
Engineering Field Activity Chesapeake
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE STEMLER

This matter comes before the Board on the Government's motion to issue an order for appellant to show cause why the appeal should not be dismissed as untimely. We granted the motion. Appellant responded. Having considered the parties' arguments, we dismiss the appeal.

FINDINGS OF FACT

1. The Government awarded Contract No. N62470-88-C-6147 to appellant in September 1988. *Management Resource Associates, Inc.*, ASBCA No. 49620, 96-2 BCA ¶ 28,588 at 142,734.

2. In June 1990, Management Resource Associates, Inc. (MRA) submitted a claim to the contracting officer. *Id.* The claim was withdrawn later the same month. *Id.*

3. Appellant and the Government exchanged correspondence, but MRA did not resubmit its claim. *Id.* at 142,735-36. Appellant filed a deemed denial appeal in February 1996, docketed as ASBCA No. 49260. *Id.* at 142,736

4. The Board dismissed ASBCA No. 49260 because MRA had not submitted its claim to the contracting officer as required by the Contract Disputes Act (CDA). *Id.* The dismissal was "without prejudice to appellant's right to submit a proper CDA claim to the contracting officer." *Id.*

5. On 28 June 2000, MRA resubmitted its claim to the contracting officer (notice of appeal, ex. 2). On 16 April 2001, the contracting officer denied the claim (*id.*). The final decision informed appellant of all its appeal rights. Appellant received the final decision on 19 April 2001 (Gov't mot., attach. 4).

6. This appeal was filed on 28 August 2002, over one year and four months after appellant received the contracting officer's final decision.

DECISION

Under the CDA, the Board lacks jurisdiction over an appeal filed more than ninety days after receipt of the contracting officer's final decision. 41 U.S.C. §§ 605(b), 606; *Inca Contracting Company, Inc.*, ASBCA No. 52171, 00-1 BCA ¶ 30,672. Because the requirement goes to the Board's jurisdiction, it cannot be waived. *Cosmic Construction Co. v. United States*, 697 F.2d 1389 (Fed. Cir. 1982), *aff'g*, *Cosmic Construction Co.*, ASBCA No. 26537, 82-1 BCA ¶ 15,541. There is no dispute that more than sixteen months passed between the time appellant received the contracting officer's final decision and the time it filed this appeal (findings 5-6). The appeal was not filed within the time required by the CDA, and it must be dismissed for lack of jurisdiction.

Dated: 11 October 2002

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

I concur

I concur

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

ALEXANDER YOUNGER
Administrative Judge
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. 53922, Appeal of Management Resource Associates, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals