



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: March 15, 2011

CBCA 2216

BIP, INC.,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

Fay A. Kennedy, President of BIP, Inc., Woodbridge, VA, appearing for Appellant.

Jean Hardin, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **McCANN**, and **WALTERS**.

McCANN, Board Judge.

The Federal Emergency Management Agency (FEMA), respondent in this case, issued task order TO005 under contract EVM-2003-CO-0197 to appellant, BIP, Inc., on September 30, 2005. The task order called for the installation of 1500 feet of four-inch pipe. Three modifications to TO005 were issued with work to be completed by May 31, 2006. On August 2, 2006, BIP filed a request for additional funds under the task order in the amount of \$64,405.30. This request was denied, and on December 20, 2007, BIP filed a claim with the contracting officer. On April 16, 2008, the contracting officer issued a final decision denying the claim and advising BIP that, if it disagreed with the decision, it could appeal to the Civilian Board of Contract Appeals within ninety days of receipt. Approximately two and one-half years later, on November 16, 2010, BIP filed this appeal.

Discussion

FEMA moves the Board to dismiss the appeal for lack of jurisdiction. It notes that the final decision advised appellant that it could appeal within ninety days and that appellant failed to do so. It contends that this Board only has jurisdiction over appeals that are filed within ninety days of receipt of the final decision. FEMA's contention is correct.

The Contract Disputes Act of 1978 governs this Board's review of contracting officer final decisions. It requires that appeals of decisions be filed "within 90 days from the date of receipt of [the] decision." 41 U.S.C. § 7104(a). This deadline for filing has been strictly construed by the Court of Appeals for the Federal Circuit because the authorization to make the filing is a waiver of sovereign immunity. A filing that is late does not provide the Board with jurisdiction to consider the case on its merits. *Renda Marine, Inc. v. United States*, 509 F.3d 1372, 1381 (Fed. Cir. 2007); *D.L. Braugher Co. v. West*, 127 F.3d 1476, 1480 (Fed. Cir. 1997); *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982); *Three Rivers Timber, Inc. v. Department of Agriculture*, CBCA 1044, 08-1 BCA ¶ 33,833; *Robert T. Rafferty v. General Services Administration*, CBCA 617, 07-1 BCA ¶ 33,577, at 166,340. Because BIP did not file its appeal within the ninety-day appeal period, we do not have jurisdiction to consider it.

Decision

FEMA's motion is granted. The case is **DISMISSED FOR LACK OF JURISDICTION**.

R. ANTHONY McCANN
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

RICHARD C. WALTERS
Board Judge