



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: April 2, 2008

CBCA 1044

THREE RIVERS TIMBER, INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Mike Hanna, Resource Manager of Three Rivers Timber, Inc., Kamiah, ID, appearing for Appellant.

Heather R. Hinton-Taylor, Office of the General Counsel, Department of Agriculture, Ogden, UT, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **GOODMAN**, and **DRUMMOND**.

DANIELS, Board Judge.

Three Rivers Timber, Inc. (Three Rivers) claims reimbursement of costs it incurred for bonding premiums under a contract with the Department of Agriculture's Forest Service (USDA). The contract is for land management activities and timber removal in the Payette National Forest. A USDA contracting officer denied the claim, and Three Rivers appealed his decision to the Board.

USDA, the respondent in this case, moves the Board to dismiss the appeal for lack of jurisdiction. The agency notes that the contractor received the contracting officer's decision on October 15, 2007; the decision advised the contractor that it could appeal to the Board

within the next ninety days; and the appeal was not filed until January 15, 2008. USDA maintains that because the Board has jurisdiction over only those appeals which are filed within ninety days of a contractor's receipt of the subject contracting officer's decision, and this appeal was filed on the ninety-second day after receipt, the Board does not have jurisdiction to consider the case. Three Rivers chose not to file a response to the motion, but did ask the Board to rule on the motion.

USDA's motion is well taken.

The Contract Disputes Act of 1978, which governs the Board's review of contracting officer decisions, requires that an appeal of such a decision be filed "[w]ithin ninety days from the date of receipt of [the] decision." 41 U.S.C. § 606 (2000). 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 late filing divests the Board of 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); *Robert T. Rafferty v. General Services Administration*, CBCA 617, 07-1 BCA ¶ 33,577, at 166,340. Because Three Rivers did not file its appeal until after the ninetieth day from its receipt of the decision in question, we do not have jurisdiction to consider the appeal.

Decision

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

STEPHEN M. DANIELS
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

JEROME M. DRUMMOND
Board Judge