

S. G. MASTRIANI CONSTRUCTION

CONTRACT NO. V693C-358

VABCA-4894

VA MEDICAL CENTER
WILKES-BARRE, PENNSYLVANIA

James M. Tressler, Esq., O'Malley & Harris, Scranton, Pennsylvania, for the Appellant.

Stacey North Willis, Esq., Trial Attorney; *Charlma Jones, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEAL

1. The above-cited appeal was docketed by the Board on May 20, 1996. On July 18, 1996, the Board received the Government Motion to Dismiss in connection with the above-cited appeal, based on the Appellant's alleged failure to submit its claim to the Contracting Officer for a final decision before presenting its claim to the Board for appeal. The Government argued that "[w]ithout the presence of a contracting officer's final decision or the failure of a contracting officer to issue a final decision within a reasonable time period, jurisdiction cannot vest in the Board." In support of its argument, the Government cited *Siska Construction, Inc.*, VABCA No. 3381, 91-3 BCA ¶ 24,144 and *AB-Tech Construction, Inc.*, VABCA No. 1531, 82-2 BCA ¶ 15,897.

2. On July 25, 1996, the Appellant informed the Board that it submitted its acoustical soffit claim to the Contracting Officer on July 10, 1996. On October 8, 1996, the Board received the Appellant's Complaint which encloses an

August 29, 1996 Final Decision, denying the claim. Based upon a review of the record now before the Board it is clear that the Contractor did not submit its claim to the Contracting Officer prior to filing its Notice of Appeal with the Board.

3. Accordingly, the Government's MOTION TO DISMISS is **GRANTED**.

VABCA-4894 is dismissed for lack of jurisdiction pursuant to Board Rule 5.

4. The Board has designated the Appellant's October 8, 1996 submittal as its Notice of Appeal and has docketed the acoustical soffit claim as VABCA-5109.

IT IS SO ORDERED

DATE: **October 15, 1996**

WILLIAM E. THOMAS, JR.
Administrative Judge
Panel Chairman

We concur:

JAMES K. ROBINSON
Administrative Judge

GUY H. MCMICHAEL III
Chief Administrative Judge