

CAMPITO PLUMBING & HEATING, INC.

CONTRACT NO. V500C-3989

VABCA-5138

VA MEDICAL CENTER
ALBANY, NEW YORK

Patrick J. Tomaselli, Esq., Attorney at Law, Troy, New York, for the Appellant.

Janet R. Lemons, 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 Government has filed a MOTION TO DISMISS FOR LACK OF JURISDICTION. The Contractor had timely appealed a "final decision" of the Contracting Officer dated September 4, 1996 to this Board. The Government states that although there is ongoing consideration of whether the contract requires the Contractor to insulate certain parts of the chillers, the Contractor, prior to the VA's September 4 letter, had "never submitted a claim within the meaning of the Contract Disputes Act."
2. The Contracting Officer, however, included language in his September 4 letter which "characterized" the Government's position as a "final decision" which placed Appellant "in the position of having to appeal . . . irrespective of the fact that the final decision was premature." In this connection, see *George Hyman Construction Co.*, VABCA No. 3078, 90-1 BCA ¶ 22,551.
3. The Government indicates that it has discussed the issue with the Appellant and states that it is important that the Contractor's "position(s) and proposal(s) be submitted and evaluated . . . prior to issuance of a final decision."
4. The Government further represents that the Respondent has indicated that it does not oppose this motion. Accordingly, the Appeal of Campitio Plumbing & Heating, Inc., VABCA-5138 is dismissed pursuant to Rule 5 for lack of jurisdiction. Such Dismissal, of course, is without prejudice to the Contractor's right to file a claim and appeal an adverse final decision in accordance with the *Contract Disputes Act*.

IT IS SO ORDERED

DATE: **January 7, 1997**

GUY H. MCMICHAEL III
Chief Administrative Judge