

D-N-A ENTERPRISES, INC

CONTRACT NO. V663C-386-95

VABCA-5555

VA MEDICAL CENTER
SEATTLE, WASHINGTON

Robert W. Tate, Esq., Seattle, Washington, for the Appellant.

Anna C. Maddan, Esq., Trial Attorney, San Francisco, California; *Charlma J. Quarles, 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 WITHOUT PREJUDICE

1. On June 15, 2000, a Prehearing Telephone Conference was held to discuss this appeal which has been pending since April 7, 1998. Appellant was seeking to re-open discovery to depose the Department's A/E and SBA officials concerning disputes about cost estimates for the contract in question.
2. During discussion it became apparent that Appellant was pursuing a claim that had not been presented to the Contracting Officer and for which the Board was thus without jurisdiction to consider at this time. Government counsel agreed that the Board lacked jurisdiction and was of the opinion that the Board would not have jurisdiction even if a claim was filed and denied by the Contracting Officer.

3. It was agreed that claims arising under this contract would be better handled in consolidated proceedings. Appellant will file its claim and, assuming a negative final decision, the Government will raise whatever jurisdictional objections it has to consideration of the appeal.

4. Given the foregoing, the Board is unable to proceed in VABCA-5555 and has little assurance of when it may do so. Accordingly, the appeal of D-N-A Enterprises, Inc., VABCA-5555 is hereby DISMISSED WITHOUT PREJUDICE pursuant to Rule 30.

5. Either party may move at any time within three years to reinstate this appeal to the active docket provided it simultaneously furnishes the Board a proposed schedule for bringing the matter to hearing within 120 days from date of motion.

IT IS SO ORDERED

DATE: **June 20, 2000**

GUY H. MCMICHAEL III
Chief Administrative Judge