

CAREMED RESPIRATORY SERVICES

Solicitation No. 673-40-99

VABCA-5930VA MEDICAL CENTER
TAMPA, FLORIDA

Camille J. Iurillo, Riden, Earle & Kiefner, P.A., St. Petersburg, Florida, for the Appellant.

Cameron V. Gore, Esq., Trial Attorney; *Philip S. Kauffman, 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 Board, in its May 4, 1999 Notice of Docketing and Order to Show Cause, noted that the basis of this appeal was the Contracting Officer's final decision denying a bid protest concerning Solicitation Number 673-40-99 filed by the unsuccessful bidder, Caremed Respiratory Services.
2. In its Order to Show Cause, the Board noted that it appeared from the documents before it that the Contractor was seeking a remedy not available from this Board and that the "dispute" did not appear to arise under, or relate to, a *contract* between the Appellant and the Government. We further noted that the *Contract Disputes Act* (CDA), 41 U.S.C. § 601-613 vests jurisdiction in the boards of contract appeals to deal "with contractors, not with disappointed bidders." *United States v. John C. Grimberg, Inc.*, 702 F. 2d 1362, 1368 (Fed. Cir. 1983). The CDA does not empower this Board to adjudicate what appears to be a bid protest action. *Coastal Corp. v. United States*, 713 F. 2d 728 (Fed. Cir. 1983); *Commercial Sound & Safety, Inc.*, VABCA No. 3750, 93-1 BCA ¶ 25,498.
3. We granted the parties until **May 24, 1999**, to Show Cause why this appeal should not be dismissed for lack of jurisdiction, pursuant to Board Rule 5. On May 12, 1999, the Contracting Officer responded that the Final Decision in VABCA-5930 incorrectly issued appellant rights contained in FAR 33.2, Disputes and Appeals, instead of VAAR Part 833.1. On May 20, 1999, Appellant responded that "Caremed Respiratory Services, Inc. will not oppose the show cause of why this appeal should not be dismissed for lack of jurisdiction pursuant to Board Rule 5."
4. Given the facts before the Board we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of Caremed Respiratory Services, VABCA-5930, is hereby dismissed pursuant to Board Rule 5.

It Is So OrderedDate: **May 26, 1999**

Guy H. McMichael III

Chief Administrative Judge
Panel Chairman

We concur:

Richard W. Krempasky
Administrative Judge

William E. Thomas
Administrative Judge