

D.V. GONZALEZ ELECTRICAL &
GENERAL CONTRACTORS, Inc.

CONTRACT NO. V532C-461

VABCA-5950

VA MEDICAL CENTER
CANANDAIGUA, NEW YORK

David M. F. Lambert, Esq., Hewes, Gelband, Lambert & Dann, Washington, D.C., for the Appellant.

Kenneth B. MacKenzie, Esq., Government Trial Attorney; **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

1. On June 6, 1999 the Government filed a Motion to Dismiss for Lack of Jurisdiction. In support thereof, it attached a copy of the signed receipt showing that the final decision, which was sent by registered mail, was delivered on March 17, 1999. The Board received Appellant's Notice of Appeal via facsimile on June 16, 1999, which was not within 90 days of the Contractor's receipt of the final decision. Appellant has elected not to proceed further in this matter.

2. The *Contract Disputes Act* (CDA), 41 U.S.C. § 601 et seq., provides in § 606 that:

Within *ninety days* from the date of receipt of a contracting officer's final decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title [emphasis supplied]

The time limitation on the filing of an appeal, as a statutory waiver of sovereign immunity, must be strictly construed. Thus, the Board is without discretion to assume jurisdiction over an appeal not filed within ninety days. ***Cosmic Construction Co. v. United States***, 697 F.2d 1389 (Fed. Cir. 1982); ***Olympus Corporation***, VABCA No. 3550, 92-2 BCA ¶ 24,856; ***Surgical Appliance Industries, Inc.***, VABCA No. 3674, 93-1 BCA ¶ 25,364; ***Nielsen Dillingham Builders, Inc.***, VABCA No. 5255, 97-2 BCA ¶ 29,005.

3. Given the facts before the Board and the Appellant's intention not to proceed further, we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of D.V. Gonzalez Electrical & General Contractors, Inc., VABCA-5950 is hereby dismissed pursuant to Board Rule 5.

It Is So Ordered

Date: **July 14, 1999**

Guy H. McMichael III
Chief Administrative Judge
Panel Chairman

We concur:

Morris Pullara, Jr.
Administrative Judge

William E. Thomas
Administrative Judge