CIC CORP

CONTRACT NO. V580P-7243 VABCA-6447 and 6448

VA MEDICAL CENTER
HOUSTON, TEXAS

Cynthia A. Reed, Esq., Associate General Counsel, CIC Corp., College Station, Texas, for the Appellant.

Cameron V. Gore, Esq., Trial Attorney; ***Phillip S. Kauffman, Esq.***, Deputy Assistant General Counsel, and ***Phillipa L. Anderson, Esq.,*** Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE ROBINSON

BACKGROUND

On September 19, 2000, the Board docketed four appeals from final decisions of the Contracting Officer (CO) located in Houston, Texas. These appeals were from disputes identified by CIC Corp (CIC or Appellant) as arising from four Maintenance Management Agreements (MMA's) executed between the parties under the authority of Contract No. V580P-7243. Only two of the appeals are disposed of by this opinion: MMA-VISN 16018 – Little Rock, Arkansas (VABCA-6447), and MMA-VISN 16048 – Alexandria, Louisiana (VABCA-6448).

In VABCA-6447, the Appellant alleged that the VA wrongfully (partially) terminated MMA-VISN 16018. The CO issued her decision by certified mail on April 29, 1999 and it was received by Appellant on May 3, 1999, according to

the return receipt. In her decision, the CO partially terminated the MMA for Little Rock only as it pertained to the Picker "Prism" Scintillation Camera System, Serial Number 185. In addition, she charged the Contractor a total of $30,942 as reprocurement costs attributable to the need for VAMC Little Rock to issue purchase orders directly to Picker International for services performed on that particular piece of equipment. The CO concluded her letter by stating that this was her final decision, and setting forth the full range of appeal rights available under the terms of the Contract Disputes Act, including the 90 day statutory period for appeals to this Board.

In a letter to the CO dated April 10, 2000, the Appellant, through its Corporate Counsel, addressed several matters pertaining to all four prior MMA's, including the two at issue in the captioned appeals. The letter began with a critique of the VA's reprocurement of services from Picker International as it pertained to the deleted equipment at Little Rock VAMC as well as assertions that the CO's cure notice and her termination and withholding of payments ($16,572.24) were contractually unwarranted. The Contractor's records showed a "zero balance" for its account under MMA-VISN 16048 at VAMC Alexandria.

The CO responded to this letter on June 7, 2000, by first advising CIC that it had failed to file a timely appeal from the partial termination for cause and that she would not revisit the matter as it pertained to VAMC Little Rock. With respect to disputed balances under other MMA's, the CO requested additional information from CIC.

The only notice of appeal by CIC from the CO's partial termination decision of April 29, 1999 was dated September 5, 2000 and was received and docketed by the Board on September 19, 2000. The appeal is well beyond the 90 days set forth in the CO's final decision.

In her response to CIC's September 5, 2000 appeal letter, the CO again reiterated the failure of CIC to file a timely appeal of her termination and reprocurement, but stated that there was no dispute over balances due for the work at VAMC Alexandria under MMA-VISN 16048.

On November 9, 2000, the Board issued an ORDER TO SHOW CAUSE why VABCA-6447 should not be dismissed for lack of jurisdiction pursuant to Board Rule 5. In that same ORDER, the Board also proposed to dismiss VABCA-6448 as moot since both parties had stated that there was no balance owing on MMA VISN 16048 at VAMC Alexandria. The Appellant failed to respond as instructed in the Board's ORDER.

DISCUSSION

The ninety day appeal deadline to an agency contract appeals board is mandated by Section 606 of the *Contract Disputes Act of 1978*, 41 USC § 601 *et seq*. This statutory waiver of sovereign immunity must be strictly construed. The Board is therefore without discretion to assume jurisdiction over any appeal not filed within ninety days. Regardless of whatever defenses that the Appellant may wish to present against the Government's termination action and reprocurement, the Board is simply not empowered to consider them. ***Cosmic Construction Co. v. United States,*** 697 F.2d 1389 (Fed.Cir.1982); ***Olympus Corporation***, VABCA No. 3550, 92-2 BCA ¶ 24,856; ***Specialty Transportation, Inc***., VABCA No. 6211, 00-2 BCA ¶ 30,978.

DECISION

For the reasons stated above, VABCA-6447 is ***Dismissed for Lack of Jurisdiction***, pursuant to Board Rule 5. Because there is no dispute over

balances owed under MMA-VISN 16048, VABCA-6448 is ***Dismissed with Prejudice***.

DATE: **November 29, 2000**

JAMES K. ROBINSON
Administrative Judge
Panel Chairman

We Concur:

MORRIS PULLARA, JR.
Administrative Judge

WILLIAM E. THOMAS
Administrative Judge