

Appeal of – )  
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Lithographic Services Inc. ) CAB No. 2010-4  
)  
Under Purchase Order No. F8760 )  
Jacket Nos. 526-455 thru 526-459 )

Appearances for the Appellant: Jack McNeil  
Michelle L. Crow  
Lithographic Services Inc.

Appearances for the Government: Julie Kelley Cannatti, Esq.  
Roy E. Potter, Esq.  
U.S. Government Printing Office

DECISION

Lithographic Services Inc. (LSI) appeals the final decision of the contracting officer, U.S. Government Printing Office (GPO), imposing a price discount of \$1,402.00 with regard to Purchase Order No. F8760, Jacket Nos. 526-455, 526-456, 526-457, 526-458, 526-459 for the printing and delivery of laminated posters and related materials for the Department of the Treasury, Internal Revenue Service (IRS). LSI argues that the contracting officer's decision to impose a price discount was improper.

We dismiss the appeal.

BACKGROUND

On October 22, 2009, LSI was issued a purchase order by the GPO to produce and deliver a total of 1,303 laminated posters and 2,145 instruction sheets/forms to be used at various IRS field offices. LSI apparently produced and delivered the materials by the November 6 delivery date. On February 5, 2010, the contracting officer issued to LSI a contract modification stating in relevant part:

In consideration for accepting a product not in accordance with specifications, the total cost of the job will be reduced by the amount of \$1,402.00 (25% discount).

Discount is due to the following contractor errors: finished products do not match approved prior-to-production samples (color, Velcro, and pocket sleeve).

\* \* \* \* \*

This is a final decision of the Contracting Officer. Pursuant to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613, and as modified by Section 1501 of Title I of Division H of the Consolidated Appropriations Act, 2008, Public Law No. 110-161), you may appeal this decision only to the U.S. Government Accountability Office Contract Appeals Board (GAO CAB). If you decide to appeal, you must—within ninety (90) days from the date you receive this decision—mail or otherwise furnish (via facsimile at 202-512-9749 or via e-mail to [CAB@gao.gov](mailto:CAB@gao.gov)) written notice to the Contract Appeals Board, U.S. Government Accountability Office, 441 G Street, NW, Room 7182, Washington, DC 20548, and provide a copy to the Contracting Officer from whom this decision this appeal is taken. The notice of appeal shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

Contract Modification No. 2, Feb. 5, 2010; GPO Fax Transmission Verification Report, Feb. 5, 2010.

LSI subsequently filed a notice of appeal with our Office on May 14.<sup>1</sup> LSI's appeal stated, among other things, that “[t]he request for appeal is beyond the required time limit.” LSI Notice of Appeal, at 1.

## DISCUSSION

Under section 6(b) of the Contract Disputes Act of 1978, 41 U.S.C. § 605(b)(2006), “a contracting officer’s decision . . . shall be final and conclusive and not subject to review . . . unless an appeal or suit is timely commenced.” Under section 7 of the Act, to be considered timely an appeal from a contracting officer’s final decision must be submitted to an agency board of contract appeals within 90 days of receipt of the final decision. 41 U.S.C. § 606; see Cosmic Constr. Co. v. United States, 697 F.2d 1389, 1390 (Fed. Cir. 1982); ZOBE, L.L.C., PSBCA Nos. 6239 et al., 10-1 BCA ¶ 34,342; Pixl, Inc. v. Department of Agriculture, CBCA No. 1203, 09-2 BCA ¶ 34,187. The 90-day

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<sup>1</sup> While LSI’s appeal is dated May 12, it was received by our Office by both email and facsimile transmission methods on May 14.

deadline is statutory; it defines the jurisdiction of the Board and the Board has no discretion to waive it. Cosmic Constr. Co., supra; Thompson Aerospace, Inc., ASBCA Nos. 51548, 51904, 99-1 BCA ¶ 30,232. Zolman Constr. & Dev., Inc., ASBCA No. 48135, 95-1 BCA ¶ 27,469. If an appeal is untimely, the Board lacks jurisdiction to consider the merits of the dispute.

In the instant case, LSI received the contracting officer's final decision on February 5. Accordingly, LSI's 90-day deadline for submitting an appeal to this Board was May 6. As LSI did not file its appeal with our Office until May 14, it is untimely.

LSI does not dispute that its appeal is untimely, or challenge the adequacy of the appeal rights advisement contained in the contracting officer's final decision. Rather, LSI argues that various equitable considerations—e.g., it is a struggling business concern trying to cover its expenses, the posters and other materials produced here are being used by IRS field offices without complaint—warrant waiving the 90-day appeal period. While we may sympathize with the contractor's predicament, we possess no discretion in this matter: we lack jurisdiction to waive the 90-day appeal period provided for in 41 U.S.C. § 606. See Cosmic Constr. Co., supra, at 1391.

The appeal is dismissed.

Dated: July 13, 2010



Louis A. Chiarella  
Board Member

We concur:

David A. Ashen  
Vice Chairman

Glen G. Wolcott  
Board Member