

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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DISMISSED FOR LACK OF JURISDICTION: July 17, 2002

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GSBCA 15831

ROBERT P. MEADOWS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert P. Meadows, pro se, Orange Park, FL.

Sandra L. Balmer, Office of Regional Counsel, General Services Administration,  
Atlanta, GA, counsel for Respondent.

Before Board Judges **BORWICK**, **NEILL**, and **DeGRAFF**.

**BORWICK**, Board Judge.

Appellant, a disappointed bidder for scrap metal in a General Services Administration (GSA) internet auction, files an appeal under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (2000) (CDA) seeking to overturn the award to another bidder. Respondent has filed a motion to dismiss for lack of jurisdiction. We grant respondent's motion, since the CDA does not confer jurisdiction on boards of contract appeals over protests of contract awards.

## Background

The GSA conducted an internet auction for an assortment of steel and other scrap metal items in January 2002. Appeal File, Exhibit 4. The Online Sale Terms and Conditions provided:

**Submission of Bid.** Bidding will begin and end at the dates and times specified for each lot in the GSAAuctions.gov website. Please note: The times displayed at GSA Auctions are in Central time. In addition, certain auctions are designed to extend the closing time if there is bidding activity. See the bidding rules at GSA Auctions for details on the auction's close time.

### Id.

The Auction Description and Bidding Rules described the auction as a single-unit English auction. Appeal File, Exhibit 10. At the close of the auction, the highest bidder would win the auction as long as that bid was at or above the seller's reserve price. Once a bidder submitted a bid, the bidder could not cancel it, but could replace it with a higher bid. Id. The start time for the auction was Tuesday, January 15, 2002, at 5:17:02 Central Standard Time. Id. The auction was to run for seven days. There was no end time provided for the auction. Instead, the auction's closing rule was that the running time for submission of bids would be extended until the inactivity period--defined as twenty minutes--was met. Id. According to the rules, the auction would end in one of these ways: (1) after a period of time specified by either the run length or end time; (2) after there had been no new bids for the inactivity period; (3) at the earlier of (1) or (2); or (4) at the later of (1) or (2). Id. The rules also explicitly stated that the auction would run for a fixed period but would be extended if there was still bidding. Id.

Appellant bid on the items. Appeal File, Exhibit 6. However, another bidder received the contract. On January 22, 2002, at 5:28:40 p.m. Central Standard Time, this bidder had submitted a higher-priced bid than appellant. Id. Appellant's Print-Out of Auction Bids, (Feb.13, 2002), Board Files. On January 23, 2002, through an e-mail message, appellant protested the award to the contracting officer maintaining that he should have been awarded the contract as the high bidder at the purported closing times for bid. Appeal File, Exhibits 7, 8; Appellant's Print-Out of Auction Bids.

The contracting officer accepted appellant's e-mail message as a complaint and issued what she called a "final decision." The contracting officer maintained that the auction was conducted according to the bidding rules established by the auction. The contracting officer explained that, in this auction, bidding remained open until the expiration of the twenty-minute inactivity period, at which time the awardee was the high bidder. Id. The contracting officer denied appellant's complaint because the rules were clearly stated prior to the auction. Id. The decision mentioned appeal rights under the CDA. Id.

Appellant filed an appeal at this Board maintaining that "I was the high bidder after the advertised closing time of 5:17." Notice of Appeal. Appellant maintains that while GSA can make its own rules for its on-line internet auctions, those rules "must be within the accepted norms within internet auctions," and that the premiere internet auction house EBAY "has absolutely positive and fixed auction close times. That is the accepted norm." Id.

Appellant also alleges that he was "not properly notified and given the opportunity to increase my bid." Appellant demands that "the sale be awarded to me, as the high bidder at closing, and all materials from the sale be properly delivered to me." Id. Appellant also requests a payment of \$17,000. Id.

Respondent filed a motion to dismiss for lack of jurisdiction, arguing that this issue is not cognizable at this Board under the CDA. We grant respondent's motion.

### Discussion

Under the CDA:

Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal.

41 U.S.C. § 607(d). The CDA defines a contractor as "a party to a government contract other than the government." 41 U.S.C. § 601(4).<sup>1</sup> Thus, under the CDA, the Board has jurisdiction only over actual contract disputes, not claims of disappointed bidders. Coastal Corp. v. United States, 713 F.2d 728, 730 (Fed. Cir. 1983); United States v. John C. Grimberg, Inc., 702 F.2d 1362, 1368 (Fed. Cir. 1983); John Blood, AGBCA 2001-103-a, et al., 01-1 BCA ¶ 31,261 (2000); Monchamp Corp. v. United States, AGBCA 89-213-1, 90-1 BCA ¶ 22,442 (1989). Appellant is not a contractor with the Government, but a disappointed bidder who was denied a contract with the Government. The whole of appellant's case is that he was entitled to a contract with the Government but did not receive it. This matter must therefore be dismissed for lack of subject matter jurisdiction. This is the case even though the contracting officer described CDA appeal rights in her final decision. The contracting officer can not confer jurisdiction on this Board where there is no statutory grant of jurisdiction. Coastal Corp., 713 F.2d at 730.

### Decision

This matter is **DISMISSED**.

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ANTHONY S. BORWICK  
Board Judge

We concur:

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<sup>1</sup> In contrast, a protest means "a written objection by an interested party" to "[a]n award or proposed award of ... a contract." 31 U.S.C. § 3551(1)(C) (2000).

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EDWIN B. NEILL  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge