



DATED: December 9, 1985

Case No. 85-BCA-28

In the Matter of:

First Louisiana Management Corporation,
Appellant

v.

U.S. Department of Labor,
Respondent

George Lewis, III
President First Louisiana Management Corporation
For Appellant

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Michael N. Apfelbaum, Esq.
Office of the Associate Solicitor
for Employment and Training Legal Services
U.S. Department of Labor
Washington, D.C.
For Respondent

ORDER OF DISMISSAL

The Contracting Officer, through his attorneys, has moved that the appeal be dismissed on the ground that no contract exists over which the Board has jurisdiction. Appellant has not filed any written response to that motion. For reasons below, we conclude that the appeal must be dismissed. In its "Notice of Appeal," dated January 10, 1985, Appellant took an appeal from the Contracting Officer's final decision denying its request that its late proposal be accepted. Thus no actual procurement contract was ever entered into by and between the parties. In Coastal Corporation v. United States, 713 F.2d 728 (1983), the Court of Appeals for the Federal Circuit held that section 3(a) of the Contract Disputes Act of 1978, Pub. L. 95-563, 92 Stat. 2383, 41 U.S.C. 602(a) circumscribes the jurisdiction of a Board of Contract Appeals, and that,

pursuant to that section of the Act, such jurisdiction extends only to an express or implied contract entered into by an executive agency for:

- (1) the procurement of property, other than real property in being;
- (2) the procurement of services;
- (3) the procurement of construction, alteration, repair or maintenance of real property;

or,

- (4) the disposal of personal property.

Thus, the teaching of that case is that the jurisdiction conferred upon Boards of Contract Appeals is limited to express or implied procurement contracts involving services, property, construction, or the disposal of personal property. Since Appellant's proposal was never accepted by the Contracting Officer, no actual procurement contract, express or implied, ever came into existence. Therefore, we conclude that the Board lacks jurisdiction over the appeal. We note, in passing, that the Contracting Officer in his final decision stated, in part, that his decision could be appealed to the Board for resolution. However, that statement cannot confer jurisdiction on the Board where such jurisdiction is lacking as a matter of law. Accordingly, the appeal of First Louisiana Management Corporation must be, and is hereby dismissed.

CHESTER SHATZ
Administrative Law Judge
Member, U.S. Department of
Labor, Board of Contract
Appeals

I concur:
Samuel B. Groner
Administrative Law Judge
Member, U.S. Department of
Labor,
Board of Contract Appeals

I concur:
Nahum Litt
Chief Administrative Law
Judge
Chairman, U.S. Department of
Labor,
Board of Contract Appeals