



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: February 24, 2026

CBCA 8606

VIAKORP CORPORATION,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Zakaria Ouahmane, Chief Executive Officer and President of Viakorp Corporation, Williamsburg, VA, appearing for Appellant.

Timothy M. Saffles, Office of General Counsel, Department of Veterans Affairs, Redwood City, CA, counsel for Respondent.

Before Board Judges **LESTER**, **ZISCHKAU**, and **KANG**.

KANG, Board Judge.

Respondent, the Department of Veterans Affairs (VA), contracted with Viakorp Corporation (Viakorp) for kitchen maintenance. The agency subsequently terminated the contract for cause. After Viakorp appealed the termination, VA moved to dismiss the appeal, arguing that Viakorp failed to file its notice of appeal within the ninety-day deadline required by 41 U.S.C. § 7104(a) (2018). Because Viakorp untimely filed its appeal, we grant the motion and dismiss the appeal for lack of jurisdiction.

Background

In September 2024, VA awarded Viakorp a task order under a multiple award indefinite-delivery, indefinite-quantity contract in the amount of \$118,208 for kitchen maintenance at the Corporal Michael J. Crescenz VA Medical Center in Philadelphia, Pennsylvania. Appeal File, Exhibit 2 at 62.¹ On April 22, 2025, the contracting officer issued a show cause notice directing Viakorp to address its failure to make deliveries in accordance with the task order. Exhibit 5 at 107-08. On May 2, 2025, Viakorp responded to the show cause notice via email. Exhibit 6 at 109. On May 19, 2025, the contracting officer issued a final contracting officer's final decision (COFD), stating that the contract was terminated for cause. Exhibit 10 at 197. The COFD stated that the termination was based on a failure to make required deliveries and provide an adequate response to the show cause notice. *Id.* Viakorp filed this appeal with the Board on September 25, 2025.

Discussion

The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), provides that once the contracting officer issues a COFD, the contractor has ninety days from its receipt of that decision to file an appeal with the appropriate board of contract appeals or twelve months to file suit in the United States Court of Federal Claims. 41 U.S.C. § 7104. Our decisions, relying on binding precedent from the United States Court of Appeals for the Federal Circuit, have held that the ninety-day requirement may not be waived, as it is strictly construed, and failure to comply creates a “jurisdictional defect” that precludes the Board from considering the merits of the appeal. *Acabay Inc. v. General Services Administration*, CBCA 8185, 25-1 BCA ¶ 38,716, at 188,246 (2024) (quoting *Yerington Paiute Tribe v. Department of the Interior*, CBCA 7818-ISDA, 24-1 BCA ¶ 38,508, at 187,161); see *West Coast General Corp. v. Dalton*, 39 F.3d 312, 315 (Fed. Cir. 1994); *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390-91 (Fed. Cir. 1982); *MINACT, Inc. v. Department of Labor*, CBCA 7575, 23-1 BCA ¶ 38,243, at 185,701 (2022)).

The parties dispute when Viakorp received the COFD. VA states that the COFD was sent via email on May 19, 2025, and argues that the COFD was therefore received on this date. Respondent's Motion to Dismiss at 4 (citing Exhibit 10 at 195). Viakorp does not dispute that the email and attached COFD were dated May 19, 2025, but contends that it did not receive the email until May 27, 2025. Appellant's Opposition to Motion to Dismiss (Opposition) at 3. Even accepting Viakorp's argument that it did not receive the COFD until

¹ All exhibits are found in the appeal file unless otherwise noted. Page citations to exhibits in the appeal file are to the bates numbers added by the agency.

May 27, 2025, the appeal is still untimely.² Ninety days from May 27, 2025, is August 25, 2025. The appeal was filed with the Board on September 25, 2025. The appeal was therefore untimely regardless of whether we calculate the ninety-day period from May 19, 2025, or May 27, 2025. For this reason, we grant VA's motion to dismiss this appeal based on Viakorp's untimely filing of its notice of appeal.³

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Jonathan L. Kang

JONATHAN L. KANG
Board Judge

We concur:

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge

² Viakorp contends that “[e]mail transmission alone does not establish receipt for purposes of triggering the CDA appeal period, and the VA has produced no evidence that Viakorp actually received, opened, or reviewed the COFD on May 19, 2025.” Opposition at 3. Because the appeal is untimely even if we accept Viakorp's claimed receipt date, we need not resolve whether receipt should be deemed May 19, 2025, or May 27, 2025.

³ As noted, section 7104 of the CDA provides that an appeal of a COFD may be filed in the United States Court of Federal Claims within one year of its receipt. 41 U.S.C. § 7104(b)(3). Viakorp's twelve-month deadline for filing suit in that court has not yet expired.