STATE OF MARYLAND
BOARD OF CONTRACT APPEALS
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SUMMARY ABSTRACT
DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS

Docket No. 2202	Date of Decision: 10-25-00
Appeal Type: [X] Bid Protest	[] Contract Claim
Procurement Identification: Under DGS Project Nos. B-000-002-001 and B-000-004-001	
Appellant/Respondent: Omegaman Sprinklers Department of General Services	

Decision Summary:

Bid Protest - Timeliness - Pursuant to COMAR 21.10.02.03B, a bidder must file a protest within seven (7) days of when he knew or should have known of the grounds of protest.

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of Omegaman Sprinklers	**)**	
	)	**Docket No. MSBCA 2202**
Under DGS Project Nos. B-000-002-001 and B-000-004-001	**)**	

APPEARANCE FOR APPELLANT: **None**

APPEARANCE FOR RESPONDENT: **John H. Thornton**
Assistant Attorney General
Baltimore, MD

OPINION BY BOARD MEMBER HARRISON

Appellant timely appeals the denial of its bid protest. The protest was denied on timeliness grounds. The merits of the protest were also discussed in the agency final decision and Appellant was advised that its protest would also have been denied on the merits.

Findings of Fact

1. On or about May 15, 2000 the Department of General Services (DGS) issued an Invitation to Bid (ITB) for replacement of defective Omega sprinkler heads in three regions of the State. This appeal involves the ITBs for the Eastern and Central Regions, respectively.
2. The deadline for receipt of bids for the Eastern Region contract was July 11, 2000, at 9:30 a.m. The deadline for receipt of bids for the Central Region contract was July 11, 2000, at 10:00 a.m.
3. At the deadline for receipt of bids for each region, bids were publicly opened and read, and bids for each region were available for public inspection immediately following bid opening.
4. The low bidder for the contract for each region was Grinnell Corporation (Grinnell). The second low bidder for the con-tract

for each region was Appellant.

5. Appellant did not attend the bid openings.

6. On July 18, 2000, DGS approved award of both contracts to Grinnell.

7. By an undated, handwritten letter received by the Procurement Officer by Fax on July 21, 2000, prior to executive of the contracts, Appellant filed a protest against award of both contracts to Grinnell.

8. In relevant part the protest which was signed by George Searles, the principal of Appellant, read as follows:

> I wish to file a protest on the State bid B-000 002 001 and B-000-002-001. I was informed on the 18 of July 2000 that I was not chosen for bids. When I went to the bid room to find out about the bids that were submitted and found out that the bids were between myself (Omegaman Sprinklers) and Grinnell Sprinklers. I would like to protest over two issues.
>
> 1. The Grinnell bid was a uncompetitive bid and ovousaly put in to undermine my bid.
>
> 2. The contracts wording was changed to exclude small business.

9. By letter dated August 21, 2000, the Procurement Officer denied Appellant's protest on the grounds that it was late, since it was not filed within seven days after bid opening with respect to the first ground or before bid opening with respect to the second ground. The Procurement Officer's decision also addressed the merits of each ground and found that they lacked merit.[1]

10. The Procurement Officer's decision was received by Appellant on August 28, 2000. On September 6, 2000, Appellant filed an appeal

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[1] Based on the record herein, the Board would also find that each ground of protest lacked merit.

with this Board.

11. Respondent filed its Agency Report with this Board on September 29, 2000 and filed a Supplement to the Agency Report with this Board on October 10, 2000. Appellant did not comment on the Agency Report or Supplement to the Agency Report. Neither party requested a hearing.

Decision

A protest against award to Grinnell on the first ground alleged by Appellant that "the Grinnell bid was a uncompetitive bid [sic] and ovousaly [sic] put in to undermine [Omegaman's] bid" had to be filed no later than seven days after Appellant knew or should have known of the basis of protest. COMAR 21.10.02.03B. The basis for this protest may have been on the ground that the Grinnell bids were too low to competitively perform the work. Whatever the basis of the protest may have been, however, it was related to Grinnell's bid price and would have been apparent on the face of Grinnell's bid. Thus, the protest on any such ground was required to be filed no later than seven days after bid opening on July 11, 2000 when bids were available for public inspection or no later than July 18, 2000. American Sanitary Products, Inc., MSBCA 2110, 5 MSBCA ¶455(1999).

A protest on the ground that the wording of the contracts "was changed to exclude small businesses" would have been an impropriety that would have been apparent before bid opening[2] and thus was required to be filed no later than the deadline for receipt of bids. COMAR 21.10.02.03A.

Since the protest was not filed by the specific deadline

[2] The contracts were set forth in the ITB's. If the pro-test is on the ground that the wording of the contracts was changed after bid opening from what appeared in the ITB's, this ground would be denied by the Board based on the record herein which includes the executed contracts and reflects no such change.

applicable to each ground alleged in the protest, the protest was late and may not be considered. COMAR 21.10.02.03C; American Sanitary Products, supra.

Accordingly, the appeal must be dismissed. Wherefore, it is Ordered this day of that the appeal is dismissed.

Dated:

Robert B. Harrison III
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;
(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever

is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2202, appeal of Omegaman Sprinklers under DGS Project Nos. B-000-002-001 and B-000-004-001.

Dated:

Mary F. Priscilla
Recorder