

**STATE OF MARYLAND
BOARD OF CONTRACT APPEALS
6 St. Paul Street
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Baltimore, Maryland 21202-1608
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**SUMMARY ABSTRACT
DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

Docket No. 2496	Date of Decision: 10/13/05
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under DGS Solicitation No. 001IT815880	
Appellant/Respondent: Trinity Protection Services, Inc. Department of General Services	

Decision Summary:

Timeliness - An appeal must be filed with the Board of Contract Appeals within 10 calendar days of receipt of the Procurement Officer's decision on a bid protest.

THESE HEADNOTES ARE PRODUCED FOR ADMINISTRATIVE REFERENCE AND OPERATIONAL USE ONLY AND SHOULD NOT BE CONSIDERED "OFFICIAL TEXT" OF THE DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS, NOR SHOULD IT BE REFERENCED OR GIVEN ANY LEGAL STATUS. A COPY OF THE FULL AND COMPLETE DECISION SHOULD BE CONSULTED AND REFERENCED. FOR FURTHER INFORMATION, CONTACT THE BOARD OF CONTRACT APPEALS.

2. Bids were due electronically¹ by June 20, 2005 at 11:00 a.m. through eMaryland Marketplace with award to be made to the responsible contractor submitting the lowest responsive base bid.
3. Of the ten bids received, Appellant's was the second lowest. The low bidder was determined to be non-responsible for not having a proper tax clearance and was eliminated without protest.
4. Upon evaluation of Appellant's bid, DGS determined that Appellant was not a responsible bidder under COMAR 21.06.01.01.B, and its bid was rejected. Appellant was advised of this determination in a letter dated July 19, 2005.
5. By letter dated July 25, 2005, Appellant protested the determination of non-responsibility.
6. In a Procurement Officer's Decision dated August 9, 2005, DGS denied Appellant's protest. The Decision reflected that it was the final agency action and advised Appellant of its right to appeal to this Board, noting that any such appeal must be filed with the Board within ten days from the date of receipt of the Decision.
7. The Decision was sent to Appellant by certified mail, return receipt requested, Certified Mail No. 7004-1160-0006-6456-

¹This procurement was carried out as an electronic transaction pursuant to Md. Code Ann., State Fin. & Proc. §13-226 and COMAR 21.03.05.

2503.

8. As reflected in the return receipt, the Decision was received by Appellant on Monday, August 15, 2005.
9. On Friday, August 26, 2005, Appellant filed its Appeal with this Board.
10. Appellant did not file Comment on the Agency Report, and no party requested a hearing.

Decision

Appellant received the Procurement Officer's Decision on Monday, August 15, 2005. The Decision was sent to Appellant by certified mail, return receipt requested. Both the United States Postal Service receipt and Appellant's appeal letter indicate receipt of the Decision on August 15, 2005. However, as reflected on the Board's date stamp, the appeal was not filed with the Board until August 26, 2005 at 9:52 a.m. Thus the appeal was filed 11 calendar days after receipt of the Procurement Officer's Decision.

Md. Code Ann., State Fin. & Proc. § 15-220 and COMAR 21.10.02.10 require that an appeal be filed with this Board within ten days of receipt of the Procurement Officer's decision on a protest. The word day is defined in COMAR 21.01.02.01(32) as a calendar day unless otherwise designated. Under COMAR 21.10.02.10, the word day is not otherwise designated, and, therefore, an appeal must be filed within ten calendar days of receipt of the final procurement agency action.

In this case, Appellant's appeal was not filed with this Board within ten calendar days of receipt of the final procurement agency action. Such a failure deprives this Board of jurisdiction. SA Instruments S.A., Incorporated, MSBCA 2133, 5 MSBCA ¶464 (1999); National Science Corporation, MSBCA 2083, 5 MSBCA ¶446 (1998); American Space Planners, Incorporated, MSBCA 1963, 5 MSBCA ¶400 (1996). When Appellant failed to appeal within the ten calendar-day period, the Procurement Officer's Decision became final, and the right to an appeal was lost. American Space Planners, Incorporated, *supra*, *citing* Coopers & Lybrand, MSBCA 1098, 1 MSBCA ¶37 (1983). Accordingly, this appeal must be dismissed.

Wherefore, it is Ordered this _____ day of October, 2005 that the appeal is dismissed with prejudice.

Dated:

Robert B. Harrison III
Chairman

I Concur:

Michael W. Burns
Board Member

Michael J. Collins
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 2496, appeal of Trinity Protection Services, Inc. under DGS Solicitation No. 001IT815880.

Dated:

Michael L. Carnahan
Deputy Recorder