

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of)
Aunt Hattie's Place, Inc.)
)
) Docket No. MSBCA 2852
Under)
Department of Human Resources)
Contract No. SSA/RCC-13-001-S)

APPEARANCE FOR APPELLANT: Emily J. Vaias
Bethesda, Maryland

APPEARANCE FOR RESPONDENT: Aretha J. Ector
Assistant Attorney General
Baltimore, Maryland

OPINION BY BOARD MEMBER DOORY

The Board lacks jurisdiction to hear the merits of the appeal because the appellant failed to file a timely protest. The Board must dismiss the appeal.

Findings of Fact

1. The Social Services Administration (SSA) is a unit within the Department of Human Resources (Department). SSA is responsible for operating the State's foster care program. The Department provides these programs through Residential Child Care (RCC) providers who offer services throughout the State. Aunt Hattie's Place, Inc. (AHP) is an RCC provider.
2. The Department issued a Request for Proposals (RFP) to obtain a list of qualified RCC providers who provide services and homes for foster care children.

3. The RFP states that protests shall be filed in accordance with COMAR 21.10.02 which requires a protest to be in writing and addressed to a procurement officer.
4. The RFP included a provision in Section 1.4 Electronic Procurement Authorization which states, "the following transactions related to this procurement and any contract awarded pursuant to it are not authorized to be conducted by electronic means: 1. submission of initial proposals; 2. filing of protests; ..."
5. The Department gave each offeror a Performance Report Card and gave each offeror an opportunity to comment or dispute information that was incorrect. AHP commented on its scores and on September 13, 2013 acknowledged that it had "undergone key personnel changes ... that resulted in being cited for non-compliance." AHP did not contact the Department again.
6. Proposals were due November 7, 2013. AHP submitted a proposal to provide RCC services and 26 beds to children in Baltimore City, Baltimore and Montgomery counties.
7. On April 20, 2013 AHP was notified that its proposal was deemed susceptible of being selected for award for the Baltimore City location for 12 RCC beds. Monday April 29, 2013 (April 27, 2013, the actual deadline, was a Saturday) was the deadline for filing a protest for a non-award.
8. AHP requested a debriefing as to why they were not awarded the other two locations. The debriefing was held April 25, 2013. The Department advised that the maximum number of beds had been awarded in Montgomery County and that no other awards would be made. AHP was advised that if new information was provided at the debriefing, a supplemental protest on that new information could be filed by May 2, 2013.

9. The same day as the debriefing, April 25, 2013, AHP sent an e-mail of protest to the Secretary of the Department. On April 26, 2013 the Procurement Officer received an e-mail protest from AHP.
10. The Procurement Officer issued a final agency decision refusing to accept the protest because the RFP did not authorize the filing of a protest by e-mail, thus the protest was denied.
11. In an effort to properly file its protest, AHP hand-delivered the same protest to the Procurement Officer on May 3, 2013. Despite the corrected filing method the Procurement Officer determined the protest was not timely because it was due on May 2, 2013, and the protest was denied.
12. On May 10, 2013 AHP filed its appeal to the Maryland State Board of Contract Appeals (Board).

Decision

The Annotated Code of Maryland State Finance and Procurement Article §15-217 states, "a protest... shall be submitted within the time required under regulations...". The Code of Maryland Regulations (COMAR) 21.10.02 sets forth the regulations for protests. COMAR 21.10.02.02(B) states, "the protest shall be in writing and addressed to the procurement officer." COMAR 21.10.02.02(C) states, "a protest maybe filed by electronic means only if expressly permitted and in the manner specified by the solicitation". COMAR 21.10.02.03 (B) states, "protests shall be filed not later than 7 days after the basis for the protest is known or should have been known whichever is earlier."

The Residential Child Care Services RFP SSA/RCC-13-001-S section 1.4B states, "The following transactions related to this procurement and any contract awarded pursuant to it are not

authorized to be conducted by electronic means: 1.submission of initial proposals; 2. filing of protest..."

AHP received an award letter for 12 beds in Baltimore City on April 20, 2013. AHP requested a debriefing which was held on April 25, 2013 to determine why it was not awarded the two other locations. The same day as the debriefing, AHP sent an e-mail protest to the Secretary of the Department, and on April 26, 2013 AHP sent an e-mail protest to the Procurement Officer. May 2, 2013 was the 7 day deadline after the April 25, 2013 debriefing.

The defects of the protest filing are that: first, it was e-mailed to the wrong party; second, it was e-mailed to the right party but it was e-mailed which was a prohibited means of delivering a protest. And finally, when the protest was filed by hand delivered hard copy to the procurement officer, it was late by a day.

Clearly the RFP states that a protest cannot be filed electronically (e-mailed). The regulations state it is the procurement officer who receives a protest filing and a protest must be filed not later than 7 days after the basis for a protest is known or should have been known. In this case AHP attempted to properly file by delivering by hand its protest to the Procurement Officer but it was delivered on May 3, 2013, one day late. COMAR 21.10.02.03(C) provides that a "protest received... after the time limits prescribed ... may not be considered."

"This Board has strictly enforced this jurisdictional requirement, even if the protest was only a day late." ISMART, LLC., MSBCA 1979, 5 MSBCA ¶417 (1997), Aquaculture Systems Technologies, LLC., MSBCA 2141, 5 MSBCA ¶470 (1999). Pursuant to COMAR 21.10.02.03(C), a procurement officer may not consider an untimely protest and therefore, the Board lacks jurisdiction to consider this untimely protest on appeal.

Wherefore it is Ordered this _____ day of July, 2013
that the Respondent's Motion to Dismiss is granted and the appeal
is Dismissed.

Dated:

Ann Marie Doory
Board Member

I Concur:

Michael J. Collins
Chairman

Dana Lee Dembrow
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 2852, appeal of Aunt Hattie's Place, Inc. Under Department of Human Resources Contract No. SSA/RCC-13-001-S.

Dated:

Michael L. Carnahan
Deputy Clerk