

Docket No. MSBCA: 2083	Date of Decision: 9/8/98
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under DGS ITB #001IT809198	
Appellant/Respondent: National Science Corporation Dept. of General Services	

Decision Summary:

Board of Contract Appeals - Jurisdiction - Timeliness of Appeal
The Board of Contract Appeals has no jurisdiction over an appeal that is not timely filed.

**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In the Appeal of National)
Science Corporation)
)
) Docket No. MSBCA 2083
Under DGS Invitation for Bid)
No. 001IT809198)
)

APPEARANCE FOR APPELLANT: None

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

MEMORANDUM DECISION BY CHAIRMAN HARRISON
ON MOTION TO DISMISS FOR LACK OF JURISDICTION

The Department of General Services (DGS) moves for dismissal of this appeal for lack of jurisdiction based on Appellant's failure to timely appeal from the Procurement Officer's decision.

Findings of Fact

1. The decision from which this appeal was taken is a July 20, 1998 decision of the Procurement Officer denying a protest filed by Appellant. The decision contained the notice of appeal rights required by COMAR 21.10.02.09C(3) advising that a written notice of appeal must be filed with this Board within ten (10) days of the date the decision is received.
2. The Procurement Officer's decision was sent to Appellant by certified mail, return receipt, Certified Mail No. P455846870.
3. The Return Receipt for delivery shows that the Procurement Officer's decision was received by Appellant on July 21, 1998.
4. Under §15-220 State Finance and Procurement Article and COMAR 21.10.02.10A, the deadline for Appellant to file an appeal with

this Board was ten (10) days¹ from July 21, 1998, or no later than Friday, July 31, 1998.

5. Appellant's notice of appeal to this Board is dated July 31, 1998, and was not filed with the Board until Monday, August 3, 1998.
6. On August 18, 1988, Respondent filed a Motion to Dismiss based on Appellant's failure to file a timely appeal with this Board.
7. By letter to the Board dated August 25, 1998, Mr. Nwadije, Appellant's "Secretary and CIO", who filed Appellant's appeal, requested that "hearings related to subject issue" be scheduled after October 7, 1998.² However, Appellant did not comment on Respondent's Motion to Dismiss, nor has an attorney authorized to represent the Appellant corporation entered an appearance or responded to the State's Motion to Dismiss.

Decision

Appellant's appeal was required to be filed with this Board no later than July 31, 1998. It was not filed with the Board until August 3, 1998. Therefore, the appeal was not timely filed. Since the appeal was not timely filed, this Board lacks jurisdiction to consider it, and the appeal must be dismissed. See American Space Planners, Incorporated, MSBCA 1963, 5 MSBCA ¶400 (1996).

Wherefore, it is ORDERED this day of September that the appeal is dismissed

Date:

Robert B. Harrison III

¹ For purposes of COMAR 21.10.02.10A, "day" means calendar day. COMAR 21.01.02.01(32).

² The Certificate of Service on Respondent's Motion to Dismiss reflects a mailing of the Motion to Mr. Nwadije on August 17, 1998.

Chairman

I concur:

Candida S. Steel
Board Member

Randolph B. Rosencrantz
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 2083, appeal of National Science Corporation under DGS Invitation for Bid No. 001IT809198.

Dated:

Mary F. Priscilla
Recorder