

Docket No. 2133	Date of Decision: 6/16/99
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under DGS Invitation to Bid No. 001IT810396	
Appellant/Respondent: SA Instruments S.A., Incorporated Department of General Services	

Decision Summary:

Board of Contract Appeals - Untimely Appeal - The Board of Contract Appeals lacks jurisdiction to hear an appeal that is not timely filed.

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of SA Instruments)
S.A., Incorporated)
)
) Docket No. MSBCA 2133
Under DGS Invitation to Bid)
No. 001IT810396)
)

APPEARANCE FOR APPELLANT: None

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

MEMORANDUM DECISION BY CHAIRMAN HARRISON

The Department of General Services (DGS) moves to dismiss this appeal for lack of jurisdiction for failure to timely appeal from the Procurement Officer's decision. For the reasons that follow, the appeal is dismissed with prejudice.

Findings of Fact

1. The decision from which this appeal was taken is a May 7, 1999 decision of the DGS Procurement Officer denying a protest filed by Appellant.
2. The Procurement Officer's decision was sent to Appellant by certified mail, return receipt requested, Certified Mail No. P-687-424-655. The Return Receipt for delivery of the Procurement Officer's decision reflects that the Procurement Officer's decision was received by Appellant on May 7, 1999.
3. Appellant's appeal to this Board was sent by Federal Express on May 19, 1999 and delivered to this Board on Thursday, May 20, 1999, whereupon the appeal was filed.

4. DGS filed a Motion to Dismiss for Lack of Jurisdiction on June 1, 1999. Appellant has not responded thereto.

Decision

Section 15-220, State Finance and Procurement Article, COMAR 21.10.02.10 and COMAR 21.01.02.01(32) require that an appeal be filed with this Board within ten (10) calendar days of receipt of the Procurement Officer's decision on a protest. Appellant's appeal was not filed with this Board within ten (10) calendar days of receipt by Appellant of the Procurement Officer's decision on its protest. COMAR 21.10.02.10B provides that an appeal that is filed late may not be considered by this Board.¹ Failure to file a timely appeal is thus jurisdictional.

Accordingly, the appeal must be dismissed. American Space Planners, Incorporated, MSBCA 1963, 5 MSBCA ¶400 (1996). Wherefore, it is Ordered this day of June, 1999 that the appeal is dismissed with prejudice.

Dated:

Robert B. Harrison III
Chairman

I concur:

Candida S. Steel
Board Member

¹ The possible exceptions under COMAR 21.10.02.10B for appeals sent by registered or certified mail or by mailgram do not apply under the facts of this appeal.

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 2133, appeal of SA Instruments S.A., Inc. under DGS Invitation to Bid No. 001IT810396.

Dated:

Mary F. Priscilla
Recorder