



it complied with the technical specifications.

4. Three bids were received and thereafter the bidders submitted units to MSP for evaluation-testing. Kustom Electronics, Inc. (Kustom) submitted the specified KR-10-10SP model. Valley Gun Shop (Valley) submitted a CMI/MPHK-55, and Appellant a Decatur Electronics MVR-724.

5. The MSP evaluated-tested all units and reported on July 18, 1990 to the DGS buyer, Ms. Linda Ruley, that neither the bid submitted by Valley nor the Appellant complied with the RFQ specifications.

6. On August 3, 1990, DGS awarded the contract to Kustom. DGS published notice of the award in the Maryland Register,<sup>1</sup> Volume 17, Issue 17C, August 17, 1990.

7. On or about August 23, 1990 and in any event not later than August 25, 1990, Mr. Rob Pollhammer, marketing manager for Appellant, telephoned Ms. Ruley to inquire whether the contract had been awarded. When informed Kustom had been awarded the contract, Appellant filed its protest letter on August 28, 1990 asserting that its model complied with the technical specifications. DGS, after confirming the evaluation - test results, issued a final decision dated October 1, 1990, denying the protest.

8. On October 10, 1990, Appellant filed a timely appeal with the Appeals Board asserting that its model complied with the technical specifications.

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<sup>1</sup>The Board notes that the notice of award stated the following:  
Awarded to: Kustom Electronics, Overland Park, KA  
Amount: \$34,713.00  
Date Awarded: August 3, 1990

### Decision

DGS has filed a Motion to Dismiss this appeal for lack of jurisdiction and avers Appellant's protest was not timely filed with the Procurement Officer.

COMAR 21.10.02.03B requires that bid protests "shall be filed not later than seven (7) days after the basis for protest is known or should have been known, whichever is earlier."

This Board has held that notice in the Maryland Register is sufficient notice of a procurement contract and constitutes constructive notice of agency action. H&N Janitorial Service, MSBCA 1401, 2 MICPEL ¶191 (1988).

COMAR 21.05.02.16 states the following;

Written notice of award shall be sent to the successful bidder. Notice of award shall be made available to the public. Notices of award of all contracts pursuant to this chapter shall be published in the Maryland Register by the procurement agency not more than thirty (30) days after the execution and approval of the contract.

We find DGS satisfied all notice requirements of contract award under the facts of this appeal. Appellant's protest filed more than seven (7) days after publication of the award in the Maryland Register was untimely. In this context, however, Appellant argues that days for filing a protest should be measured by working days of the State Government. Days defined in COMAR to mean "calendar day unless otherwise designated." Day is not otherwise designated in COMAR 21.10.02.03B and thus seven calendar are intended. Appellant did not file its protest until August 28, 1990, eleven calendar days after Maryland Register publication of notice.

The Board is aware DGS considered the protest on its merits and issued a final decision which did not address timeliness of the protest. However, this Board has consistently held timeliness requirements of the aforementioned regulations are substantive in nature, and as such must be strictly construed since the rights and interests of not only the protester but those of the contracting agency and other interested parties are at stake.

Rohm/Mid-Atlantic, MSBCA Docket 1094, 1 MICPEL ¶35 (1983).

Kennedy Temporaries, MSBCA 1061, 1 MICPEL ¶21 (1982).

Accordingly the Motion to Dismiss is granted.