

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of AMERICAN SPACE)
PLANNERS, INCORPORATED)

Under DGS HT-009-842-01)

) Docket No. MSBCA 1963
)

September 4, 1996

Timeliness - The Board has no jurisdiction to hear appeals which are untimely filed, i.e., more than 10 days following receipt of the procurement officer's final decision.

APPEARANCES FOR APPELLANT: None

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

Opinion of the Board

This matter came before the Board on the Appeal of American Space Planners, Incorporated (ASP) from the final decision of a Department of General Services (DGS) Procurement Officer denying Appellant's Bid Protest. Respondent filed two motions to dismiss the bid protest appeal, and Appellant, through its President, responded.

Findings of Fact

1. ASP filed a bid protest through its attorneys, Radcliffe & Radcliffe, P.A.
2. The Procurement Officer issued a final decision in this bid protest by letter dated June 26, which Appellant agrees was received by Appellant on June 27, 1996. Appellant filed this appeal on July 17, 1996, more than 10 days after receipt of the Procurement Officer's decision.
3. There is no contract between Appellant and DGS; Appellant complains that the State's Contractor, R.R. Gregory, Inc., failed to award a subcontract to it.

Decision

Md. Ann. Code State Finance and Procurement Article, §15-220(b) provides that an appeal from a decision on a bid protest "shall be filed within 10 days of receipt of notice of the final

procurement agency action.” Furthermore, under COMAR 21.10.02.10B “an appeal received by the Appeal Board after the time prescribed in Section A may not be considered....” COMAR 21.10.02.10A requires that appeal to this Board must be filed within 10 calendar days of receipt of notice of the final procurement agency action. Since the appeal to this Board was made by ordinary mailing, by the Appellant, it must have been filed with this Board by June 17, 1996 1993 or be found untimely. The appeal is late, and this Board has no jurisdiction to hear the matter.

The Board has no power to waive a legislative and regulatory prerequisite to its jurisdiction even if to do so would not be prejudicial to any party. See, Eastern Chemical Waste Systems, MSBCA 1310, 2 MICPEL 139(1986). We have consistently held that the statutory appeal period is a mandatory requirement which must be satisfied to perfect jurisdiction. Jorge Company, Inc., 1 MSBCA 1047, 1 MICPEL ¶20 (1982); McLean Contracting Company, 1 MSBCA 1108, 1 MICPEL ¶31, (1982). When Appellant did not file its appeal within the ten calendar day period prescribed by State Finance and Procurement Article § 15-220(b) and COMAR 21.10.02.10A, the final decision of the Procurement Officer became binding and the right to an appeal was lost. Coopers & Lybrand, 1 MSBCA 1098, 1 MICPEL ¶37 (1983). See, Kennedy Temporaries v. Comptroller of the Treasury, 67 MD. App. 22, 42, (1984).¹

For the foregoing reasons, the appeal is denied.

¹ Even if the appeal had been timely, this Board would be precluded from hearing this case. At no time was Appellant a bidder or contractor with DGS for the subject contract for construction of the Maryland Archaeological Facility at Jefferson Patterson Park. Appellant was only a possible subcontractor of R.R. Gregory, Inc. for shelving at the Facility. It is complaining that the State’s Contractor, R.R. Gregory, Inc. failed to enter into a subcontract with ASP.

One whose subcontract offer is rejected by the State’s general contractor has no standing to file a protest with the State. COMAR gives standing to protest only to an “interested party”, defined as a person who is an actual or prospective bidder or contractor for a contract with the State. COMAR 21.10.02.01B(1). Coach and Car Equipment Corporation, MSBCA 1531, 3 MSBCA ¶249 (1990).

Therefore, it is this 3rd day of September, 1996 Ordered that this appeal be dismissed as the appeal is untimely.

Dated:

Candida Steel
Board Member

I concur:

Robert B. Harrison, III
Chairman

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 B4 Time for Filing

a. Within Thirty Days

An order for appeal shall be filed within thirty days from the date of the action appealed from, except that where the agency is by law required to send notice of its action to any person, such order for appeal shall be filed within thirty days from the date such notice is sent or where by law notice of the action of such agency is required to be received by any person, such order for appeal shall be filed within thirty days from the date the receipt of such notice.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in the appeal of American Space Planners, Inc., MSBCA 1963, under Department of General Services HT-009-842-01, C.O. 170001.

Dated: September 4, 1996

Mary F. Priscilla
Recorder