

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of ARROWHEAD MARKET)
)
Under DHMH Solicitation No.) Docket No.
DHMH PS 91-788) MSBCA 1610

December 17, 1991

Decision Summary:

Contract Award - A bid received after the time and date set in the invitation for bids is late and may not be considered for contract award where the bid's untimely receipt was not due to the action or inaction of State personnel directing the procurement activity or their employees.

APPEARANCE FOR APPELLANT: Greig C. Johnson
Vice President Operations
Oakland, MD

APPEARANCE FOR RESPONDENT: Helen E. Bowlus
Staff Attorney
Baltimore, MD

APPEARANCE FOR INTERESTED PARTIES: None
Accident IGA
Brownings Foodland
Buckels Market
Grantsville Foodland
Hometown Market
Matthews Food Store
Mountain Lake Park IGA
S&S Market

OPINION BY MR. PRESS

Appellant filed this appeal from a Department of Health and Mental Hygiene (DHMH) procurement officer's final decision denying Appellant's bid protest.

Findings of Fact

1. On April 19, 1991 services solicitation DHMH PS 91-788 for the WIC Program¹ appeared in the Maryland Register. The notice advised

¹The WIC Program is a DHMH special supplemental food program for low-income women, infants and children to ensure that they receive proper nourishment.

prospective vendors of the nature of the procurement, the date, time and place for pre-bid conference, and date, time and place bids were due. Bids (applications) were due at the WIC office, 201 West Preston Street, First Floor, Baltimore, MD by 10:00 a.m. on May 13, 1991.

2. Appellant on May 15, 1991, mailed its application by U.S. Postal Express Mail, in the Oakland, Maryland post office.

3. On May 16, 1991, the Appellant's application was received and signed for by Warren Greenwell, a DHMH mailroom employee. At approximately 10:35 a.m., Mr. Greenwell called WIC to inform the unit that an Express Mail package for WIC had been received. Shortly thereafter, on May 16, 1991, this application was picked up at the mailroom by WIC personnel and taken to the WIC offices on the first floor. The Express Mail envelope is stamped as being received by WIC on the aforementioned date and the word "Late" is written on it.

4. The envelope was opened, and Appellant's application was reviewed. By letter dated August 26, 1991, Ms. Dolores M. Rice, Chief, Program Operations & Compliance Unit Office of the Maryland WIC Program notified Appellant it would not be recommended for a WIC contract. This decision was reached because a higher rated vendor was chosen and Appellant's low voucher redemption history. In addition, the letter advised Appellant of his right to file a protest. The letter was addressed to Appellant's parent company in Pittsburgh, PA, and was received on September 4, 1991. On September 12, 1991, Mr. Greig C. Johnson, Vice President of Operations of

Appellant's Oaklawn, MD store filed a protest which was received by the procurement officer on September 16, 1991. Although this protest was received more than 7 days after the WIC denial letter was received in Pittsburgh, it was accepted as timely because of its date of receipt in Oakland was not known.

5. On October 3, 1991, Mr. Joel B. Leberknight, Chief, Division of Contracts and Telecommunications, by letter, notified Appellant it would soon receive notification of approval to remain as an authorized WIC vendor. However, on October 4, 1991 Mr. Steve Trageser, Assistant Director of the Maryland WIC program, notified Mr. Leberknight Appellant's application was received late. Mr. Leberknight, acting in the capacity of procurement officer on October 17, 1991, sent Appellant a final decision by certified mail denying the protest on the grounds that the application was received after the required due date and time. A timely appeal was filed with this Board on October 22, 1991.

Decision

COMAR 21.05.02.10(A) provides "Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late." COMAR 21.05.02.10.(B) states: "A late bid, late request for modification, or late request for withdrawal, may not be considered." "[E]xceptions may be made when a late bid, withdrawal, or modification is received before contract award, and the bid, modifications, or withdrawal would have been timely but for the action or inaction of State personnel directing the procurement activity of their employees."

Appellant's bid was received at the place designated in the solicitation after the time and date set for receipt of applications, and it clearly was late. There is nothing in this record to indicate the lateness of Appellant's application was due to the action or inaction of State personnel. Appeal of Pioneer Oil Company, Inc., MSBCA 1060, 1 MICPEL ¶ 16 (1982); Appeal of Patco Distributors, Inc., MSBCA 1270, 2 MICPEL ¶ 128 (1986). Accordingly, the DHMH procurement officer acted properly in rejecting Appellant's application after establishing to his satisfaction the lateness in question was not due solely to the action or inaction of State personnel.

In passing, this Board is cognizant that WIC personnel should never have opened Appellant's application letter nor compounded the sequence of events by notifying Appellant it would soon receive notification of approval, and subsequently withdrawing the approval when it was established the application was received after the due date and time. However, under the aforementioned facts we find the application was not timely received and this Board is unable to apply any exception.

Therefore, the appeal is denied.