

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of CRYSTAL ENTERPRISES)

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Docket No. MSBCA 1971

Under DGS DHMH-DCT 96-3493

October 23, 1996

Bid Protest - Timeliness - A protest on grounds other than improprieties in a solicitation must be filed with the Procurement Officer within seven days after the protesting party knew or should have known of the basis for protest. COMAR 21.10.02.03B.

APPEARANCE FOR APPELLANT: None

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

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the final agency decision that Appellant's bid protest concerning a reference submitted by the apparent low bidder could not be considered because the protest was late.

Findings of Fact

1. On May 29, 1996, the Department of General Services (DGS) (on behalf of the Department of Health & Mental Hygiene) issued Invitation to Bid (ITB) No. DHMH-DCT 96-3493 for the procurement of janitorial services at the Regional Institute for Children and Adolescents in Cheltenham, Maryland.
2. Thirteen bidders submitted bids by the time of bid opening on June 25, 1966. The apparent low bidder was Brener Building Maintenance Co., Inc. (Brener); the second low bidder was CleanSTAR, Inc. (CleanSTAR) and the third low bidder was Appellant.

3. Brener's bid was rejected as nonresponsive for failure to acknowledge the addendum and Brener did not protest against the rejection of its bid. After rejection of Brener's bid CleanSTAR was the apparent low bidder.

4. The ITB did not contain any responsibility criteria except that bidders were required to furnish a "[l]isting of references. . .over the preceding three (3) years [and] references must be of comparable size and complexity of [sic] the facility in the solicitation." CleanSTAR's bid did not contain any references. However, by letter dated July 15, 1996, CleanSTAR furnished DGS with a list of three references. One of the references was CleanSTAR's experience in cleaning an animal hospital.

5. No later than July 25, 1996, the DGS Procurement Officer met with Appellant and advised Appellant orally that CleanSTAR would receive the contract award.¹ Based on the written record² the Board finds that Appellant knew at the time of this oral conversation that one of CleanSTAR's references was its experience in cleaning an animal hospital.

6. By letter dated August 12, 1996 and received by the DGS Procurement Officer on August 14, 1996, Appellant protested that the CleanSTAR reference regarding its experience cleaning an animal hospital was not an appropriate reference, presumably because an animal hospital is not of comparable size and complexity as a medical facility for people. The DGS Procurement Officer would not consider the protest on grounds it was late and Appellant appealed.³

Decision

A protest on grounds other than improprieties in a solicitation must be filed with the Procurement Officer within seven days after the protesting party knew or should have known of the basis for protest. COMAR 21.10.02.03B. The record reflects that Appellant knew of the basis of its protest concerning the propriety of an animal hospital reference not later than July 25, 1996. The

¹ The meeting was in regard to award of another contract to Appellant under a different ITB.

² Neither party requested a hearing and Appellant did not file comment on the Agency Report nor respond to a motion to dismiss on timeliness grounds filed by DGS.

³ The Procurement Officer's decision reflects that CleanSTAR's references were included with its bid at bid opening and immediately available for review by Appellant. According to the Agency Report, however, the CleanSTAR references were provided later in a letter dated July 15, 1996. Based on the Agency Report it is clear that the Procurement Officer would have considered the protest to be late measuring the time from July 25, 1996 when the record reflects Appellant knew that one of the references was an animal hospital.

protest filed on August 14, 1996 on such ground was therefore late and may not be considered. See Manolis Painting Co., Inc., MSBCA 1483, 3 MSBCA ¶233 (1989). The appeal is therefore dismissed.

Wherefore, it is ordered this 23rd day of October, 1996 that the appeal is dismissed.

Dated: October 23, 1996

Robert B. Harrison III
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.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1971, appeal of Crystal Enterprises under DGS DHMH-DCT 96-3493.

Dated: October 23, 1996

Mary F. Priscilla
Recorder