

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of DeKrane Group,)
Inc.) Docket No. MSBCA 1681
)
Under DGS Contract Nos.)
NA-000-911-002)
NB-000-911-002)
NG-000-911-002)

December 9, 1992

Notice of Claim - COMAR 21.10.04.02A mandates that "a contractor shall file a written notice of claim...within 30 days after the basis for the claim is known or should have been known, whichever is earlier."

COMAR 21.10.04.02C provides: "A notice of claim or a claim that is not filed within the time prescribed in Regulation .02 shall be dismissed."

APPEARANCE FOR APPELLANT: Benfred B. Alston, Esq.
Brown, Alston & Byrd
Baltimore, MD

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

OPINION BY MR. PRESS

Appellant appeals the Department of General Services (DGS) Procurement Officer's decision that Appellant's notice of claim was not timely and therefore was dismissed. DGS moves for dismissal of this appeal by Summary Disposition or remand to the Procurement Officer for a decision if this Board finds notice of claim and claim were timely filed.

Findings of Fact

1. Appellant was awarded a construction contract by DGS to perform certain handicapped accessibility modifications at certain Department of Juvenile Services (DJS) facilities. The facilities were located at (1) The Backbone Mountain Youth Center (DGS Contract No. NA-000-911-002), (2) Greenridge Youth Center (DGS Contract No. NB-000-911-002) and (3) Meadow Mountain Youth Center (DGS Contract No. NG-000-911-002).
2. Included in the specifications incorporated in the contract were DGS's standard "General Conditions of Contract Between Owner and Contractor," September 1, 1991 edition. Section 7-11 of the General Conditions provided for the State's right to terminate the contract for the contractor's default.

3. On May 7, 1992, DGS notified Appellant, confirming understandings reached at a meeting of May 6, 1992, of DGS's notice of intent to terminate the contract if Appellant did not correct all outstanding construction problems by May 8, 1992.

4. DGS by letter dated May 13, 1992, which was received by Appellant on May 14, 1992, notified Appellant that having failed to demonstrate its ability to correct contract performance in accordance with DGS's letter of May 7th the contract was terminated.

5. On May 15, 1992, Appellant's President, Joseph Ehimika by telephone spoke with John Hartlove, Chief Construction Engineer¹, of DGS to discuss the reason for termination and indicated the desire to obtain an independent architect to evaluate Appellant's quality of work.

6. On June 8, 1992, Appellant met with Mr. Hartlove to discuss the evaluation of the architect. However, Mr. Hartlove did not rescind the DGS termination.

7. On July 2, 1992, Appellant by letter notified DGS of its intent to file a claim, and for "an extension in the time to file the claim by 30 days to August...."

8. On July 22, 1992 the Procurement Officer acknowledged receipt by DGS of Appellant's letter of July 2, 1992 on July 6, 1992 and held that "in accordance with Section 6.15 I of the General Conditions and COMAR 21.10.04.02, your notice of claim has not been received in a timely fashion and therefore it is dismissed."

9. On August 21, 1992, Appellant filed a timely appeal to this Board.

Decision

COMAR 21.10.04.02A mandates that "a contractor shall file a written notice of a claim... within 30 days after the basis for the

¹ Although the chief construction engineer was not the DGS Procurement Officer, he was the DGS authorized representative pursuant to COMAR 21.01.02.01.(67) which defines Procurement Officer to include an authorized representative acting within the limits of authority.

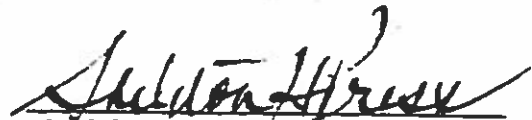
claim is known or should have been known, whichever is earlier." This mandate also appears in the contract at, Section 6.15 I of the General Conditions. The Appellant, the Board finds was required to file a notice of claim contesting the termination of its contract on or before June 13, 1992, thirty (30) days following receipt on May 14, 1992 the DGS termination letter of May 13, 1992. It was incumbent upon Appellant to file a timely claim, but Appellant in its letter of July 2, 1992 was requesting an extension of time to file its claim. However, we conclude that Appellant failed to follow the mandates of COMAR 21.10.04.02A and Section 6.15 I of the General Conditions requiring its notice of claim to be filed no later than June 13, 1992.

COMAR 21.10.04.02C provides: "A notice of claim or a claim that is not filed within the time prescribed in Regulation .02 shall be dismissed." See Appeal of D.R. Mason, MSBCA 1481, 3 MSBCA 239 (1990).

Appellant postures based upon the subsequent conduct of DGS following the issuance of the termination letter DGS waived the written notice requirement. However, this Board finds in view of the DGS letter of May 13, 1992, and the unwillingness of DGS on June 8, 1992 to rescind the termination, Appellant was bound by provisions within the contract and the requirements of COMAR to file its notice of claim at the latest by June 13, 1992.

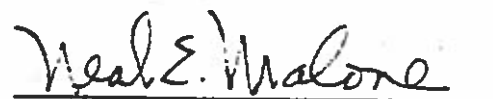
Having failed to follow the mandated requirements the Board grants the DGS Motion for Summary Disposition.

Dated: December 9, 1992


Sheldon H. Press
Board Member

I concur:


Robert B. Harrison III
Chairman


Neal E. Malone
Board Member

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1681 appeal of DeKrane Group, Inc. under DGS Contract Nos. NA-000-911-002, NB 000-911-002, and NG-000-911-002.

Dated: December 9, 1992

Mary A. Priscilla
Mary A. Priscilla
Recorder

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