

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of DELAWARE ELEVATOR, INC.)
)
Under University of Maryland) Docket No. MSBCA 1741
Eastern Shore)
Bid ES 93/84 - #13)

September 15, 1993

Bid Protest Timeliness - A bid protest "based upon alleged improprieties in a solicitation that are apparent before bid opening... shall be filed before bid opening..."

Appellant's protest was filed after bids were opened and was considered untimely pursuant to COMAR 21.10.02.03A and was not entitled to substantive review by the Board.

APPEARANCE FOR APPELLANT: Charles E. Meeks, Jr.
President
Salisbury, MD

APPEARANCE FOR RESPONDENT: Andrew M. McDonald
Assistant Attorney General
Baltimore, MD

APPEARANCE FOR INTERESTED PARTY: William R. Golander
General Elevator
Local Representative
Salisbury, MD

OPINION BY MR. PRESS

From a final decision of the University of Maryland Eastern Shore (UMES) Procurement Officer denying Appellant's protest as untimely as well as on the merits Appellant timely appealed to this Board. The parties did not request a hearing.

Findings of Fact

1. UMES issued a solicitation of bids for an elevator service contract for the period July 1, 1993 to June 30, 1994. Bids were to be opened on June 29, 1993, but by a supplemental request to bid dated June 30, 1993, UMES extended the date on which bids would be opened until July 2, 1993.
2. Appellant and General Elevator submitted timely bids.
3. After bids were opened on July 2, 1993 UMES awarded the contract to General Elevator.
4. After the award of the contract, Appellant sent a letter dated July 14, 1993 and received by UMES on July 19, 1993, protesting that the elevator specifications "did not clarify whether

the bidders were to provide miscellaneous spare parts or equipment...." Such alleged grounds would have been apparent on the face of the bid documents.

5. On July 23, 1993 the UMES Procurement Officer by final decision informed Appellant that its protest was untimely. From that decision Appellant appeals to this Board.

Decision

It is evident Appellant's bid protest was untimely. COMAR 21.10.02.03A requires that protests "based upon alleged improprieties in a solicitation that are apparent before bid opening...shall be filed before bid opening..." Appellant missed the deadline by many days. This Board has repeatedly held that the language of COMAR 21.10.02.03 "must be strictly construed, since an untimely objection to a contract award necessarily prejudices the rights and interests of the low bidder, the contracting agency and perhaps other interested parties." International Business Machines Corporation, MSBCA No. 1071, 1 MICPEL ¶22 (1982). This Board has consistently held that COMAR's timeliness requirements are "substantive in nature and must be strictly construed." Motorola Communications and Electronics, Inc., MSBCA No 1343, 2 MICPEL ¶154 (1987). See also Kennedy Temporaries v. Comptroller, 57 Md. App. 22; 486 A.2d 1026 (1984); Innovative Integration, Inc., MSBCA No. 1730, _____ MICPEL ¶ _____ (August 23, 1993). Appellant's appeal must be dismissed.

Therefore, it is this 15th day of September, 1993 Ordered that this appeal be dismissed as the protest is untimely.

Dated: September 15, 1993 Sheldon H. Press
Sheldon H. Press
Board Member

I concur:

Robert B. Harrison III
Robert B. Harrison, III
Chairman

Neal E. Malone
Neal E. Malone
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 MSBCA 1741, appeal of Delaware Elevator, Inc. under UMES Contract No. Bid ES 93/84 - #13.

Dated: *September 15, 1993*

Mary J. Priscilla

Mary J. Priscilla
Recorder

CONFIDENTIAL

MEMORANDUM FOR THE DIRECTOR

Reference is made to the report of the Special Agent in Charge, New York, dated 10/15/54, and the report of the Special Agent in Charge, New York, dated 10/20/54, both captioned as above.

It is noted that the above-captioned reports contain information which is classified as Confidential.

It is suggested that the above-captioned reports be classified as Confidential.

Very truly yours,
Special Agent in Charge

Approved: _____
Special Agent in Charge

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