

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of Glenbeigh Incorporated)	
)	
Under DPS & CS RFP #9245-0201)	Docket No. MSBCA 1699
)	
)	

January 27, 1993

MSBCA Jurisdiction - Timeliness of Appeal

An appeal of the agency's denial of a bid protest received by the Appeals Board thirteen days following receipt of the Procurement Officers's final decision by the protester's attorney was untimely. Md. Ann. Code, State Finance and Procurement Article ¶15-220(b) and COMAR 21.10.02.10A.

APPEARANCES FOR APPELLANT:	Marvin Mandel, Esq. Timothy H. Sheridan, Esq. Annapolis, MD
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APPEARANCE FOR RESPONDENT:	Alan D. Eason Asst. Attorney General Baltimore, MD
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OPINION BY MR. PRESS

This Appeal has been taken from a final decision of the Department of Public Safety and Correctional Services (Corrections) denying Appellant's protest. Appellant submitted a proposal, seeking to compete for the contract to be awarded. However, Appellant's proposal was found to not be reasonably susceptible of being selected for award. Corrections moves that we dismiss the appeal on the grounds that the appeal was untimely. A Motion to Dismiss was orally argued before the Board and memoranda were submitted by the parties.

Findings of Fact

1. Appellant's attorney by letter dated November 3, 1992 forwarded a protest letter to the Corrections Procurement Officer.
2. The Procurement Officer issued a final decision on the protest dated November 19, 1992. The final decision letter was sent by certified mail to Appellant's attorney, return receipt requested, which was received by Appellant's attorney on November 20, 1992. A copy of the final decision was also forwarded to N.

Jeffrey McCann, Vice President, at Appellant's office in Jupiter, Florida which was received on November 23, 1992.

3. An appeal from the bid protest decision was filed with the Board by Appellant's attorney on December 3, 1992, thirteen days after the Appellant's attorney received the bid protest final decision.

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." Accord COMAR 21.10.02.10A. 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 . . ."

When Appellant's attorney received the Procurement Officer's final decision on November 20, 1992, it had until November 30, 1992 to file a timely appeal with this Board. 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 by its attorney 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).

Appellant contends MD Rules of Civil Procedure 1-203(a)¹ provides a statewide standard for the computation of time after an event prescribed by an applicable statute. Section "d" of that same rule provides that whenever a party has the right or is required to do some act or take some proceeding within a

¹Rule 1-101. Applicability, "Title 1 applies to procedure in all courts of this State..." This Board is an Executive Branch agency not a court.

prescribed period after service upon the party of a notice or other paper, and service is made by mail, three days shall be added to the prescribed period.

Based on the aforementioned rule, Appellant postures that even though the final decision was received by mail on November 20, 1992, the due date for an appeal is ten days from the date of receipt plus three days. In addition, Appellant notes the 10 day period included the Thanksgiving Holiday and two weekends, therefore five of the ten days were not business days. Appellant finally concludes its place of business is located in Jupiter, Florida, although all correspondence pertaining to the protest between the parties in this case were between counsel and the Procurement Officer.

However, we do not find a statement in Maryland's General Procurement Law or its implementing COMAR Title 21 regulations extending the period for filing an appeal to this Board.²

The only time requirement that this Board can observe is that an appeal to this Board should be taken within ten calendar days of receipt of notice of a final action. See, The Piscataway Company, Inc., 3 MSBCA 1595, 3 MICPEL ¶281 (1991), Compare, W.R.M. Communications, 3 MSBCA 1470, 3 MICPEL ¶220 (1989) and National Elevator Company, Inc., 2 MSBCA 1370, 2 MICPEL ¶183 (1988). The appeal was not filed by Appellant's attorney until more than ten calendar days had passed following the attorney's receipt of the Procurement officer's final decision. The Appeals Board thus lacks jurisdiction over the appeal. § 15-220(b) and COMAR 21.10.02.10A. See Shipman Ward, Inc., 2 MSBCA 1379, 2 MICPEL ¶177 (1988).

Appellant observes that the provisions of COMAR 21.10.02.09D provide:

"The procurement officer shall furnish a copy of the

²This is a bid protest which involves contract formation. State units necessarily need to act expeditiously to fulfill State needs and time is of the essence. This underlining rationale reasonably supports the strict enforcement of the COMAR requirement.

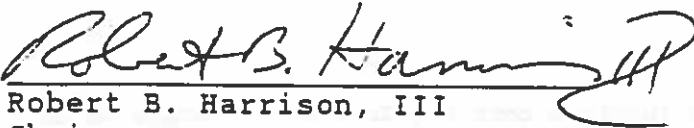
decision to the protester and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of its receipt." Appellant argues that this provision requires that the protester itself "shall" receive the final decision before the ten days commence to run. Appellant asserts that receipt by the attorney should not be construed as receipt by the protester because "protester" is defined in COMAR 21.10.02.01B(3) as "...any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest." However, we find such definition does not preclude the finding herein that notice to the attorney constitutes notice to the protester where the attorney filed the protest. A corporation being a legal rather than a natural person may only act through an authorized agent. See Silver Spring Development Corp. v. C.C. Guertler, 257 Md. 291(1970); Bob Holding Corp. V. Normal Realty Corp., 223 Md. 260 (1960); National Elevator Company, Inc., *supra*. Indeed, if we were to have adopted Appellant's reasoning based on its construction of the COMAR regulations the protest in this matter having been filed by Appellant's attorney would not legally constitute the filing of a protest by a "protester" and at this juncture it would be to late under COMAR to file a protest with the contracting agency.

For the foregoing reasons the motion is granted and Appellant's appeal is dismissed with prejudice.

Dated: *January 29, 1993*


Sheldon H. Press
Board Member

I concur:


Robert B. Harrison, III
Chairman

Neal E. Malone

Neal E. Malone
Board Member

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1699 appeal of Glenbeigh Incorporated under DPS & CS RFP #9245-0201.

Dated: *January 29, 1992*

Mary F. Priscilla

Mary F. Priscilla
Recorder

