

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

IN THE APPEAL OF GLOBE ELECTRIC )  
COMPANY, INC. )

Under DGS ITB No. 00IIT13276 )

) Docket No. 2278  
)

May 28, 2002

Board of Contract Appeals - Timeliness of Appeal - The Board lacks jurisdiction over an appeal that is not timely filed.

Board of Contract Appeals - Timeliness of Appeal - Where the last day for filing a timely appeal falls on a Sunday or a State holiday, the time is extended to the next working day of the State government under the provisions of Ann. Code Art. 1, §36.

APPEARANCE FOR APPELLANT: None

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

OPINION BY BOARD MEMBER HARRISON

The Department of General Services (DGS), Respondent, moves for dismissal of the appeal on grounds that the appeal was not timely filed thus depriving the Board of jurisdiction to hear it.

Findings of Fact

1. By a decision dated March 13, 2002, the Procurement Officer, Karen Alder, denied a protest filed by Appellant.
2. The Procurement Officer's decision was sent to Appellant by Certified Mail No. 7099 3400 0001 1611 2321.
3. Appellant received the Procurement Officer's decision on March 28, 2002, according to a statement in Appellant's facsimile letter of April 5, 2002 to a DGS official.
4. The return receipt for Certified Mail No. 7099 3400 0001 1611 2321, by which the Procurement Officer's decision was sent to Appellant, does not show a date of delivery of the decision to Appellant. However, both sides of the return receipt show the date the receipt was mailed back by the U.S. Postal Service to the Procurement Officer after delivery to Appellant and on both sides of the return receipt the date shown is March 20, 2002. The return receipt bears a date stamp of March 25, 2002 showing when the return receipt was received by the Procurement Officer.

5. The Board finds that the Procurement Officer's decision had been delivered to Appellant no later than March 28, 2002, the date Appellant states it received the decision in Appellant's facsimile letter of April 5, 2002 to a DGS official. Based on a March 28, 2002 receipt date of the Procurement Officer's decision, the deadline for filing an appeal to this Board under St. Fin. & Proc. § 15-220(b)(1) and COMAR 21.10.02.10 would have been 10 calendar days after March 28, 2002. Ten calendar days after March 28, 2002 would be by April 7, 2002, a Sunday, and under An. Code Art. 1, § 36 the deadline for filing an appeal would be extended to Monday, April 8, 2002.<sup>1</sup>
6. Appellant's appeal was filed with the Board on Monday, April 22, 2002.

#### Decision

Appellant's appeal was required to be filed no later than Monday, April 8, 2002. It was not filed with the Board until Monday, April 22, 2002.

Because Appellant's appeal was filed late, the Board lacks jurisdiction to entertain the appeal. American Space Planners, Incorporated, MSBCA 1963, 5 MSBCA ¶400 (1996); ACME Market #6762 et al., MSBCA 1763, 4 MSBCA ¶346 (1993).

Wherefore, it is Ordered this 28<sup>th</sup> day of May, 2002 that the appeal is dismissed with prejudice.

Dated: May 28, 2002

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Robert B. Harrison III  
Board Member

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<sup>1</sup> Because Appellant's appeal was not sent by registered or certified mail, but by UPS Next Day Air, the appeal was required to be received by the Board no later than Monday, April 8, 2002. See COMAR 21.10.02.10B.

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 2278, appeal of Globe Electric Company, Inc. under Dept. of General Services ITB No. 0011T13276.

Dated: May 28, 2002

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Loni Howe  
Recorder

