

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of J.D. Ross Inc.)
)
Under DGS contract No. P-020-) Docket No. MSBCA 1712
854-001)

August 24, 1993

Contract Dispute Timeliness - An appeal to this Board must be filed within thirty (30) calendar days of the receipt by the contractor of a Procurement Officer's final decision in a contract claim dispute.

APPEARANCE FOR APPELLANT:

Thomas A. Baker, Esq.
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Bank Center, Tower II
100 South Charles Street
Baltimore, MD

APPEARANCE FOR RESPONDENT:

Linda K. Boyd
Assistant Attorney General
Baltimore, MD

OPINION BY MR. MALONE

Appellant filed an appeal to this Board. Respondent has filed a Motion to Dismiss the appeal as untimely.

The material facts relevant to the appeal are not in dispute.

Findings of Fact

1. On June 3, 1988 the Department of General Services (DGS) issued Bid Request contract No. P-020-854-001 for the construction of comfort stations in Patapsco State Park which was awarded to Appellant on July 26, 1988.
2. Appellant by letter dated June 30, 1992 filed a claim arising out of the project with DGS. Appellant had previously by assignment dated July 15, 1991 assigned, transferred and set over its rights to Property and Casualty Insurance Guaranty Corporation (PCIGC). DGS is not a party to this assignment.
3. Appellant and PCIGC's legal counsel by letter of September 3, 1992 inquired into the claim following an inquiry by Maryland First Financial Services (MFFS)¹ of the status of the claim by letter dated August 12, 1991.

¹ MFFS apparently assumed the duties of Appellant's original indemnitor who is no longer in business.

4. The Procurement Officer issued a final decision denying the Appellant's claim dated December 23, 1992.
5. The final decision was mailed certified mail return receipt requested to Appellant and that letter was received and signed for on December 29, 1992 by Mr. John E. Cirrincione, Executive Vice President of Appellant.
6. DGS by ordinary mail also sent an additional courtesy copy of the decision to Randi Alper Pupkin, Esquire, an attorney with the firm representing Appellant, which letter was not received by counsel.
7. Despite the receipt of the decision by Appellant, it failed to inform its counsel of the DGS final decision.
8. Legal counsel for Appellant, unaware, of the final written decision of the Procurement Officer, filed an appeal to this Board on February 5, 1993 alleging constructive denial of the Appellant's claim under Maryland State Finance & Procurement Article, Code Annotated, Section 15-219(d)(2).
9. DGS now moves to have the appeal dismissed since over 30 days had passed from the receipt by Appellant of the final decision on December 29, 1992 and the appeal filed with this Board on February 5, 1993.

Decision

An appeal of a Procurement Officer's written decision to this Board must be filed within thirty (30) days after receipt of the notice of final action. Maryland State Finance & Procurement Article, Code Annotated Section 15-220 and COMAR 21.10.04.06A.

It is undisputed Appellant received the notice of the final decision of DGS on December 29, 1992 and failed to file an appeal with this Board within the thirty (30) days allowed.

The requirement for filing a timely appeal is a jurisdictional prerequisite long recognized by this Board. Jorge Company, Inc., MSBCA 1047, 1 MICPEL ¶20 (1982), McLean Contracting Co., MSBCA 1108, 1 MICPEL ¶31 (1982).

There is no requirement under the notice provisions governing procurement contracts nor in the express requirements of the con-

tract itself that DGS send the notice to any person other than the contractor. DGS fully complied with this requirement and can not be held to account for the failure of Appellant to act or contact its legal counsel to pursue the claim.

Counsel has requested this Board to find that the notice required must be sent to the assignee of Appellant, the indemnity company, or its legal counsel. We disagree. Appellant while an inactive contractor, still existed as a corporation and had not sought protection in bankruptcy, receivership or other-wise amended its agreement with DGS. In fact, Appellant continued to receive mail at its business address.


Therefore, it is this 24th day of August, 1993 Ordered that this appeal be dismissed as untimely.

Dated: 8/24/93


Neal E. Malone
Board Member

I concur:


Robert B. Harrison III
Chairman


Sheldon H. Press
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 of 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 1712, appeal of J.D. Ross, Incorporated under DGS Contract No. P-020-854-001.

Dated: *Aug. 24, 1993*

Mary F. Priscilla
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Recorder