

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of MANOLIS PAINTING CO.,
INC.

Under DGS/BPB&G 90/017M
Painting Services Contract

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Docket No. MSBCA 1483

December 18, 1989

Bid Protest - Timeliness - The requirement under COMAR 21.10.02.03B that a protest "shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier" is substantive in nature and must be strictly construed.

APPEARANCE FOR APPELLANT:

None

APPEARANCE FOR RESPONDENT:

Michael P. Kenney
Assistant Attorney General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

The Baltimore Public Buildings and Grounds Division (BPB&G) of the Department of General Services (DGS) has moved to dismiss the captioned appeal on grounds that Appellant's bid protest was not timely filed. For reasons that follow we shall grant the motion and dismiss the appeal with prejudice.

Findings of Fact

1. On August 15, 1989, bids were opened in the subject procurement. Appellant was advised on this date that it was the low bidder and would be awarded the contract.
2. In September, Appellant was informed in a telephone conversation with Mr. Anthony Shuster of BPB&G that the Secretary of DGS had revised the awarding criteria and awarded the contract to Kally General Contractors (Kally). The date of the telephone conversation was either September 4, 1989 as alleged by DGS, or September 29, 1989 as alleged by Appellant.
3. Appellant filed a written protest with Mr. Paul Woods, the DGS procurement officer, on October 16, 1989 on grounds based on information conveyed during the telephone conversation with Mr. Shuster.
4. By letter dated November 8, 1989, the procurement officer denied Appellant's protest on the grounds that it was untimely under the provisions of COMAR 21.10.02.03 which require the filing of a protest "not later than 7 days after the basis of the protest is known or should have been known, whichever is earlier."

5. Appellant filed a timely appeal to this Board on November 20, 1989.

6. Respondent filed its Motion to Dismiss on December 4, 1989 and appellant replied thereto on December 7, 1989.

Decision

The DGS procurement officer denied Appellant's protest on the grounds that it was untimely under COMAR 21.10.02.03 which provides as follows:

A. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals. For procurement by competitive sealed proposals, alleged improprieties that did not exist in the initial solicitation but which are subsequently incorporated in the solicitation shall be filed not later than the next closing date for receipt of proposals following the incorporation.

B. in cases other than those covered in §A, protests shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier.

C. The term "filed" as used in §A or §B means receipt by the procurement officer. Protesters are cautioned that protests should be transmitted or delivered in the manner that shall assure earliest receipt. A protest received by the procurement officer after the time limits prescribed in §A or §B may not be considered.

(Underscoring added).

We have consistently held that the filing requirements of COMAR 21.10.02.03B are substantive in nature and must be strictly construed. Grady & Grady, Inc., MSBCA 1455, ___ MSBCA ___ (1989); Motorola Communications and Electronics, Inc., MSBCA 1343, 2 MSBCA ¶154 (1987); Frank W. Hake, MSBCA 1323, 2 MSBCA ¶151 (1987).

Appellant by its own admission had knowledge of the grounds of its protest by September 29, 1989 at the latest. Its protest on these grounds filed with the procurement officer some seventeen days later thus was not timely.

Accordingly, the Appellant's protest was properly rejected by the procurement officer under COMAR 21.10.02.03C. The motion to dismiss the appeal is granted.