# BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of MARYLAND AVENUE GROCERY	)	
with seven with the floor start so	)	Docket No.
Under DHMH Solicitation No.	)	MSBCA 1593
DHMH PS 91-788	)	

## September 19, 1991

Contract Award - Late Bid - Burden of Proof - Appellant failed to establish that the lateness of its bid should be excused pursuant to the exception set forth in COMAR 21.05.02.10B permitting consideration of a late bid where the bid would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees.

APPEARANCE FOR APPELLANT:

Dorsey W. Robinson Cumberland, MD

APPEARANCE FOR RESPONDENT:

Sharon Krevor-Weisbaum Assistant Attorney General Baltimore, Md.

APPEARANCE FOR INTERESTED PARTIES: Cumberland County Market Super Fresh Food Market Super Fresh Food Market #317 Cumberland Bilo Food #753 McIntyre's 7-Day Market, Inc. Jim's IGA

None

#### OPINION BY MR. PRESS

Appellant filed this appeal from a Department of Health and Mental Hygiene (DHMH) procurement officer's final decision denying Appellant's bid protest. Appellant has not submitted comments to the DHMH Agency Report nor requested a hearing.

### Findings of Fact

On April 19, 1991 services solicitation DHMH PS appeared in the Maryland Register. The notice advised prospective vendors the nature of the procurement, the date, time and place for pre-bid conference, and date, time and place bids were due. Bids were due at the WIC office, 201 West Preston Street, First Floor,

Baltimore, MD by 10:00 a.m. on May 13, 1991.

- 2. On April 30, 1991, a pre-bid conference was held. At the conference it was emphasized by State personnel all bids were due no later than 10:00 a.m. on May 13, 1991 at the WIC office, 201 West Preston Street, First Floor, Baltimore, MD. Appellant did not attend this conference and on May 10, 1991, Appellant mailed his application.
- 3. On May 13, 1991, JoAnn M. McGowern of WIC made the following contacts with the DHMH mailroom pertaining to mail sorted for the WIC programs:, 9:30 a.m. telephone call no mail. 9:45 a.m. telephone call no mail. 10:00 a.m. personal visit no mail.
- 4. On May 14, 1991, at approximately 2:30 p.m., Appellant's application was present and stamped received.
- 5. WIC by certified mail on July 3, 1991 notified Appellant his application was received late and Appellant filed a timely protest. On July 30, 1991, the Procurement Officer notified Appellant by certified mail denying the protest on the grounds his application was received after the required due date and time. A timely appeal was filed with this Board on August 9, 1991.

## <u>Decision</u>

Appellant, the Board recognizes in its appeal seeks an exception to the requirement that all bids must be received at the designated place, by the designated date and time.

COMAR 21.05.02.10(A) provides "Any bid received at the place

<sup>&</sup>lt;sup>1</sup> Ms. McGowern beginning April 19, 1991 began to check for WIC applications with the mail room and periodically picked up those that had been received, and by the bid due date of May 13, 1991, WIC had received 483 timely applications.

designated in the solicitation after the time and date set for receipt of bids is late." COMAR 21.05.02.10(B) states: "A late bid, late request for modification, or late request for withdrawal, may not be considered." "[E]xceptions may be made when a late bid, withdrawal, or modification is received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees."

Appellant mailed his application on May 10, 1991, one business day before bids were due. From the record before the Board there is no evidence that State personnel activity or inactivity would allow the exception Appellant seeks.

This Board has consistently held that the burden is upon the Appellant to demonstrate with reasonable certainty that the lateness was caused by State personnel directing the procurement activity or their employees. Appeal of Patco Distributors, Inc., MSBCA 1270, 2 MICPEL 128 (1986). This it has not done.

Therefore, the appeal is denied.



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