

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of NUTRITION AMERICA, INC. )  
  ) MSBCA Docket  
Under Morgan State Univ. Head Start) No. 1612  
Program IFB-Food Service                  )

December 19, 1991

Decision Summary:

Timeliness: Notice Final Procurement Officer's Decision - The date of receipt by Appellant's attorney of the procurement officer's final decision commences the ten day period within which an appeal to this Board must be made.

APPEARANCE FOR APPELLANT:                     Cynthia A. Tucker  
   President  
   Nutrition America, Inc.  
   Baltimore, MD

APPEARANCE FOR RESPONDENT:                   Elena Langrill  
   Assistant Attorney General  
   Baltimore, MD

OPINION BY MR. MALONE

Appellant appeals the denial of its bid protest by the Morgan State University Head Start Program (Morgan State). Morgan State filed with this Board a Motion to Dismiss the appeal as untimely. There was no request for hearing by either party.

Findings of Fact

1. On September 20, 1991 the Morgan State Procurement Officer received a timely bid protest filed and signed by Robert Fulton Dashiell, Esquire the attorney at law representing Nutrition America, Inc. (Nutrition) the Appellant in this case. This letter of protest was on the letterhead of the attorney with a note at the end of the letter "cc: Cynthia A. Tucker, President".
2. Morgan State issued a final decision on the bid protest by letter dated October 14, 1991 which was sent by certified mail,

return receipt requested. Appellant's attorney, Mr. Dashiell, received the final decision on October 17, 1991.

3. On October 31, 1991, fourteen calendar days after receipt of the final decision, Appellant, pro se filed an appeal with this board.

4. The Appellant by a pro se Memorandum represented that it received a copy of the decision from its attorney, Mr. Dashiell, on October 22, 1991, and that the period for filing an appeal to this Board should run from October 22, 1991, not October 17, 1991, the date their attorney received the final decision.

#### Decision

COMAR 21.10.02.10A requires a bid protest appeal to this Board to be filed within ten (10) days of receipt of the procurement agency action on the protest. Days in this context are defined in COMAR 21.10.07.01(3) as calendar days. These provisions are mandatory and cannot be waived by this Board. Compgraph, Inc., MSBCA 1418, 3 MICPEL 199.

The narrow issue for the Board to decide is: when the corporate Appellant's attorney receives notice of final action on a bid protest where that attorney originally filed the protest for the Appellant, is the notice requirement of COMAR 21.10.02.10 satisfied. The Board concludes the notice requirement was satisfied when received by Appellant's attorney on October 17, 1991. See Piscataway Company, Inc., MSBCA 1595, 3 MICPEL ¶281, (1991).

COMAR 21.10.05.03A requires corporate Appellants to be represented by an attorney at law licensed in Maryland. The

attorney as the legal representative for the Appellant filed the protest. Morgan State correctly mailed to the Appellant's attorney the final decision and upon receipt the period for appeal to this Board commenced.

Wherefore the Motion to Dismiss is granted.

attached as the paper representing the for the question filed the  
proceeding. The court has not yet decided on the merits of the  
the law. The court has not yet decided on the merits of the  
issue presented.

Respectfully,  
[Signature]