

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of PYRAMID CLEANING,)
MAINTENANCE AND SUPPLY, INC.)
Under UMBC Bid # BC-12873 B) Docket No. MSBCA 1099

March 7, 1983

Bid Protest - A protest filed more than seven (7) days after disappointed bidder knows of grounds for protest is untimely pursuant to COMAR 21.10.02.03.

APPEARANCE FOR APPELLANT:

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President
Pyramid Cleaning, Maintenance and Supply, Inc.
Baltimore, MD

APPEARANCE FOR RESPONDENT:

Christine Steiner
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APPEARANCE FOR INTERESTED PARTIES:

Paul L. Cordish, Esq.
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Carl E. Fuheman, Jr.,
President
Supreme Services of
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OPINION BY MR. LEVY

This appeal is from a University of Maryland Baltimore County (University) procurement officer's final determination denying Appellant's protest of the University's acceptance of the low bid for its cleaning services contract. Appellant contends that the low bid submitted by Abacus Corporation (Abacus) was not responsible because the work could not be performed profitably for the amount bid. The University maintains that (1) Abacus' bid was responsive; (2) Abacus was responsible and (3) the appeal should not be considered since the original protest was not timely filed with the University's procurement officer.

Findings of Fact

1. On April 2, 1982, the University advertised in the Maryland Register that it would receive bids on May 5, 1982 for its Housekeeping and Cleaning Services contract.

2. Appellant, Abacus and other prospective bidders attended a pre-bid conference on April 15, 1982 where they reviewed the project specifications with University personnel. On April 26, 1982, the Invitation for Bids (IFB) including addendum #1, was mailed to prospective bidders. The addendum, among other things, extended the bid opening date to May 26, 1982.

3. The work to be performed under this contract consisted of both routine weekly cleaning assignments and special cleaning projects to be performed on an as-needed basis. This division of the work was reflected on the bid sheets to be completed by each bidder as follows:

- (1) On page BF-3 of the bid package the bidder was to provide information on the cost of performing the routine weekly cleaning (blanks R-1 to R-12). The total maximum charge for the routine cleaning was provided at the bottom of the page (blank R-13).
- (2) On pages BF-3-B and C the bidder was to provide the cost for performing twenty (20) separate special cleaning projects. The total annual price for completing all of the projects was provided at the bottom of page BF-3-C.
- (3) On page BF-3-D the totals are carried forward from the previous pages and respectively shown as item P-1 (total weekly bid price for routine cleaning) and item P-2 (total weekly bid price for completing all Special Projects¹). The total of items P-1 and P-2 was then filled in as item P-3 and became the price which determined who was the low bidder.²

4. Bids were opened on May 26, 1982. A summary of the bids reveals that while Appellant submitted the lowest price on the routine weekly cleaning, Abacus submitted the lowest combined total cost. Abacus' price for the special cleaning projects was less than 50% of that which the next lowest bidder quoted for that work.

¹This number was obtained by dividing 52 into the total annual price shown at the bottom of page BF-3C.

²See page IB-4, Bid Specification, Exh. D, of the Agency Report.

5. On June 2, 1982, Crothall American, Inc., an unsuccessful bidder, wrote and requested that Abacus' low prices be evaluated. The University requested and subsequently received confirmation from Abacus that its bid was correct.

6. On June 4, 1982, Appellant filed a written protest with Mr. Tom Boyle at the University Physical Plant Office. The stated reason for protest was that Abacus "submitted an irresponsible bid." Appellant further advised that "the project work requires many more hours per week in order to perform according to the specifications."³

7. The University's procurement officer denied Appellant's protest in a written final determination dated July 16, 1982. In so doing, the procurement officer concluded that the protest had not been addressed to the proper procurement officer as provided in COMAR 21.10.02.02B and that it had not been filed timely as provided in COMAR 21.10.02.03B. He also advised that because the Abacus bid had been verified, the University felt that it was in its best interest to accept it.

8. The Board of Public Works approved the award of this contract to Abacus at its meeting on July 20, 1982.

9. An appeal (dated July 30, 1982) of the final determination was filed with this Board on August 2, 1982.

Decision

Before we can consider the substantive issues of this appeal, we must first determine if the appellant complied with the timely filing requirements of COMAR 21.10.02.03.

A. Protests based upon alleged improprieties in any type of solicitations which 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. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated in it shall be protested not later than the next closing date for receipt of proposals following the incorporation.

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

³At the hearing of this appeal Appellant clarified this statement by advising that it was specifically referring to the special projects part of the specifications. Appellant maintained that Abacus' bid for these projects was unreasonably low based upon the amount of time it normally would take to perform them. (Tr. 10-14, 19-20)

C. The term "filed" as used in this regulation means receipt in the procurement agency. Protesters are cautioned that protests should be transmitted or delivered in the manner which shall assure earliest receipt. Any protest received in the procurement agency after the time limits prescribed in this regulation may not be considered. (Underscoring added.)

This Board repeatedly has held that the timeliness requirements of the foregoing regulation are substantive in nature and must be strictly construed since the rights and interests of so many interested parties are at stake. See Kennedy Temporaries, MSBCA 1061 (July 20, 1982) at p. 5; International Business Machines, MSBCA 1071 (August 18, 1982) at p. 5; Rolm/Mid-Atlantic, MSBCA 1094 (January 21, 1983) at p. 5.

Here Appellant became aware of the Abacus bid no later than May 27, 1982. In fact, Mr. James Hudgins, Jr., Appellant's representative, testified that he called the University either shortly after the May 26, 1982 bid opening or the next day to inquire about the unbalanced appearance of the Abacus bid. (Tr. 33) Despite this knowledge and concern, however, a bid protest was not filed until June 4, 1982. By waiting more than 7 days to file its protest, Appellant therefore lost its right to question the award of this contract under Maryland law.⁴

For the foregoing reasons, the appeal is denied.

⁴For purposes of these regulations, day is defined as "calendar day." COMAR 21.01.02.25.