

evaluation process: price 40%, specifications 20%, hardware 15%, maintenance 15% and reputation and overall ability to provide installation 10%. The evaluation team recommended the three vendors with the highest total scores to the agency director who was to make the final decision. Appellant was not in the recommended group.

The agency director, realizing that the evaluation team had used additional criteria in its evaluation, made her final selection from the three recommended firms by re-evaluating them using only the three criteria originally designated in the RFP. The contract was awarded to American Bell on April 28, 1983 and the Appellant was notified of the award on the same day.

Appellant participated in a debriefing conference on May 4, 1983 and subsequently filed a timely letter of protest with Corrections. Appellant raised ten grounds of protest some of which dealt with preproposal submission errors and others with errors in the evaluation process. Appellant also contended that it did not receive certain documents that it had requested at the May 4 debriefing conference.

Mr. Carl Schlaich, the procurement officer, issued his final decision by letter dated July 18, 1983. He denied most of Appellant's arguments on the ground that they were either not filed timely or that there was insufficient evidence to support the allegation. However, he agreed with certain of Appellant's contentions and determined that the entire evaluation process should be redone. However, rather than returning the evaluation process to the evaluation team, he proceeded to evaluate all of the proposals and found that the contract award to American Bell was correct. Mr. Schlaich's final decision, received by Appellant on July 25, 1983, responded to all of Appellant's grounds of protest and further advised Appellant of its right to take an appeal to this Board within fifteen days from receipt of the letter. The requested documents from the debriefing meeting were sent by Mr. Schlaich under cover of a second letter dated July 22, 1983 and received by the Appellant on July 26, 1983.

Appellant filed its appeal with this Board on August 10, 1983. It raised as its grounds for appeal the same ten issues that it had raised in its original protest including those that the procurement officer had sustained. Corrections filed its Motion To Dismiss alleging that Appellant needed to file its notice of appeal with the Board on or before August 9, 1983 to comply with COMAR 21.10.02.09A and that the notice of appeal did not set out the grounds for the appeal as required by COMAR 21.10.07.02C(3).

Decision

Although the Appellant has raised several serious questions concerning the manner in which this emergency procurement was conducted, this Board has no choice but to dismiss the captioned appeal as untimely. When Appellant received the procurement officer's final decision on July 25, 1983 it had until August 9, 1983 to file a timely appeal with this Board. We have consistently held that the statutory appeal period is a mandatory requirement which must be satisfied to perfect jurisdiction. Jorge Company, Inc., MSBCA 1047, July 7, 1982; McLean Contracting Company, MSBCA 1108, December 21, 1982, reconsidered March 2, 1983. When the Appellant did not file

its appeal within the fifteen calendar day period prescribed by Article 21, §7-201(d)(1) and COMAR 21.10.02.09A, the final decision of the procurement officer became binding and the right to an appeal was lost. Coopers & Lybrand, MSBCA 1098, February 1, 1983.

Appellant contends that the final decision was delivered to its offices after 5:00 p.m. on July 25, 1983, therefore, the counting of the fifteen day appeal period should start from the next day. However, we do not find a statement in either the law or regulations requiring the final decision of the procurement officer to be delivered before a certain time of the day. The only time requirement that we observe is that an appeal to this Board should be taken within fifteen calendar days of receipt of notice of a final action. Article 21, §7-201(d) and COMAR 21.10.02.09A. Notice of the final action was received on July 25, 1983 and the appeal should have been filed on or before August 9, 1983, the fifteenth day.

Appellant also contends that since it received certain requested information by a second letter on July 26, 1983 as a part of the procurement officer's response to its protest, the fifteen day appeal period should be counted from that date. Appellant argues that this information, a copy of American Bell's proposal, was needed to formulate a decision as to whether or not it should continue with the formal protest procedure. We do not agree with this contention since Article 21, §7-201(d)(1) only provides that an appeal should be taken "[w]ithin 15 days of receipt of notice of a final action disapproving a resolution or approving a decision not to resolve a dispute relating to the formation of a State contract . . ." (Underscoring added). The actual final decision was received on July 25, 1983 and Appellant knew on that date that its protest had been denied. The final decision responded to all points of protest and advised Appellant of its right of appeal.

Order

For the foregoing reasons the motion is granted and Appellant's appeal is dismissed with prejudice.

