

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of Shipman Ward, Inc.        )  
  )     Docket No. MSBCA 1379  
Under DGS RFQ #C-4260                )

May 31, 1988

Jurisdiction. The Appeals Board lacks jurisdiction over a bid protest appeal if not taken within the mandatory ten day appeal period required by statute.

APPEARANCE FOR APPELLANT:                         None

APPEARANCE FOR RESPONDENT:                         John H. Thornton  
   Assistant Attorney General  
   Baltimore, MD

MEMORANDUM OPINION BY MR. KETCHEN

This is an appeal from a Department of General Services (DGS) procurement officer's decision denying Appellant's bid protest on grounds that the protest was filed late. DGS moves that we dismiss the appeal because the appeal filed with the Appeals Board is untimely.

Findings of Fact

1. Bids received in response to DGS Request for Quotations C-4260 for electric typewriter cassette ribbons were opened on February 24, 1988.
2. On March 14, 1988, Appellant filed a protest of the contract award to Brother International Corporation on the ground that at the time of the award, and at present, Brother International Corporation does not have available for sale a 235,000 character typewriter ribbon as required by the solicitation's specifications.

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3. The DGS procurement officer denied the protest in a final decision dated March 22, 1988 which was received by Appellant on March 28, 1988, as evidenced by a signed U.S. Postal Service return receipt.

4. The basis for denying the protest was that Appellant knew or should have known the reason for the protest at the bid opening on February 24, 1988 attended by Appellant. At that time, the DGS buyer read the prices and the ribbon yield figures for all bidders. Appellant's protest letter filed nineteen days later exceeded the seven day limit set forth in COMAR 21.10.02.03B for filing a bid protest.

5. Even though the protest was not timely, the DGS procurement officer denied the protest on the merits. He found that the Brother International Corporation's ribbon #17020 did meet the specified 235,000 character yield based on tests of the ribbon performed by the United States Testing Company, Inc. of New Jersey.

6. The final decision Appellant received from the DGS procurement officer on March 28, 1988 included notice that Appellant had ten days from the date of receipt of the procurement officer's final decision to file an appeal with the Appeals Board.

7. Appellant filed an appeal by letter received by the Appeals Board on April 13, 1988, sixteen days after Appellant's receipt of the DGS procurement officer's final decision.

8. DGS filed a motion to dismiss the instant appeal on April 22, 1988, asserting lack of Board jurisdiction based on timeliness grounds. Appellant was given an opportunity to respond to the DGS motion to dismiss

by May 10, 1988 but has failed to as of this date.

Decision

Md. Ann Code, State Finance and Procurement Article  
provides:

"(f) Appeals to Board.-(1) A bidder or prospective bidder or offeror, or a contractor may appeal action of a procurement agency to the Appeals Board:

(i) within 10 days after notice of a final action a protest regarding the formation of a contract and, in which case, the Appeals Board shall decide the case expeditiously giving it precedence over other matters before the Appeals Board..."

The statutory appeal period is a mandatory requirement which must be satisfied to perfect jurisdiction in this Board. Jorge Company, Inc., MSBCA 1047, 1 MICPEL ¶20; McLean Contracting Company, MSBCA 1108, 1 MICPEL ¶31. When Appellant failed to file its decision of the DGS procurement officer became binding, and the right to appeal was lost. Coopers & Lybrand, MSBCA 1098, 1 MICPEL ¶37.

For the foregoing reason, therefore, the motion is granted and Appellant's appeal is dismissed with prejudice.

*Man 28-13  
Agent  
16 days after*

