

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of TEMP AIR COMPANY )  
Under Maryland Transportation ) Docket No. MSBCA 1542  
Authority Contract No. )  
FSK-AC/H.88 )

October 24, 1990

Timeliness - Contract Dispute - An appeal of a final agency action to the Appeals Board shall be filed, for a contract claim, within 30 days after receipt of the notice of final action.

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APPEARANCE FOR RESPONDENT: Steven W. Vanderbosch  
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Opinion by Mr. Malone

This matter comes before the Appeals Board on a Motion to Dismiss filed by Respondent to Appellant's appeal.

Findings of Fact

1. The parties have stipulated to the facts recited in Respondents Motion to Dismiss and Supplemental Memorandum in Support of Motion to Dismiss in relevant part as follows:

- a. MdTA Contract No. FSK-AC/H.88 incorporated the MDOT General conditions for Maintenance Contracts, which included a Disputes clause making the contract subject to COMAR 21.10.
- b. That Frances W. Riley was the Procurement Officer for MdTA Contract No. FSK-AC/H.88.

The Procurement Officer's final decision denying Appellant's contract claim dated July 9, 1990 was reviewed and

approved by the Maryland Transportation Authority's Director of Administration (the head of the unit), by the Maryland Transportation Authority's Executive Secretary (the head of the agency) and by Counsel to the Maryland Transportation Authority, before it was issued, all in accordance with State Finance and Procurement Article, §15-218, and COMAR 21.10.04.04.

c. The Procurement Officer's final decision was received by Appellant on July 10, 1990 as evidenced by the certified mailing receipt [which is a part of the record].

d. The Notice of Appeal was filed with the Appeals Board on August 22, 1990, more than 30 days after receipt of the Procurement Officer's final decision by Appellant.

e. The Procurement Officer's final decision dated July 9, 1990 included the paragraph required by COMAR 21.10.04B(5), which advised Appellant it must appeal the final decision within 30 days from receipt of the final decision.

#### Decision

State Finance and Procurement Article, §15-220(b)(2) of the Annotated Code of Maryland requires that an appeal of a final agency action to the Appeals Board shall be filed, for a contract claim, within 30 days after receipt of the notice of the final action.

COMAR 21.10.04.06 likewise requires an appeal to the Appeals Board to be mailed or otherwise filed within 30 days of the receipt of notice of a final decision, and further states that an appeal

be considered, except for certain, enumerated exceptions not applicable herein.

The Appeals Board has previously held that the 30-day filing requirement is mandatory, and failure to file an appeal within the prescribed period deprives this Board of jurisdiction to hear the appeal. Kennedy Electric Co., Inc., MSBCA 1479, 3 MSBCA ¶232 (1989).

Appellant's reliance on State Finance and Procurement Article, §15-218 is misplaced. This section does not require some technical indication that the final action was taken in compliance with §15-218. All of the requirements of section 15-218 were performed by Respondent.

Appellant's reliance on COMAR 21.10.04.02(D) is also misplaced. There is a two tier administrative remedy for contract disputes. COMAR 21.10.04.02(D) deals with requirements for filing a claim at the agency level not an appeal to this Board. The Procurement Officer's final decision sets forth the 30 day period for filing an appeal of which Appellant had actual notice.

Appellant's reliance on State Finance and Procurement Article 15-211 is also misplaced. The operative event for Appeals Board jurisdiction is the final action of a unit. The fact further action is contemplated does not stay the running of the appeal period.

Therefore the Motion to Dismiss the appeal is granted.

