

BY THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of W.R.M. COMMUNICATIONS)
Under DGS Project) Docket No. MSBCA 1470
No. OTM-PAYST-8904)

October 6, 1989

MSBCA Jurisdiction - Timeliness of Appeal - An appeal of the agency's denial of a bid protest received by the Appeals Board eleven days following receipt of the procurement officer's final decision by the bidder was untimely.

MSBCA Jurisdiction - The Appeals Board may not consider an untimely appeal since the ten day appeal period prescribed by Md. Ann. Code, State Finance and Procurement Article ¶15-220 is a mandatory requirement which must be satisfied in order to perfect the Appeal Board's jurisdiction.

Agency Final Decision - Time for Decisions - COMAR 21.10.02.09 requires an agency procurement officer to issue a final decision on a protest in writing as expeditiously as possible after the agency procurement officer receives all relevant, requested information. Accordingly, a procurement officer in his discretion need not delay the decision on the protest to accommodate the schedule of a disappointed protester or its representatives.

APPEARANCE FOR APPELLANT:

David J. Preller, Esq.
Preller and Preller
Towson, MD

APPEARANCE FOR RESPONDENT:

Michael P. Kenney
Assistant Attorney General
Baltimore, MD

MEMORANDUM OPINION BY MR. KETCHEN ON DGS' MOTION TO DISMISS

This is an appeal of actions taken by the Department of General Services (DGS) Office of Telecommunications Management (OTM) in its procurement of pay telephone stations. DGS has requested that the appeal be dismissed as untimely.

Findings of Fact

1. OTM issued a request for proposals (RFP) for pay telephone installation and service on June 2, 1989. Proposals were due on June 29, 1989.
2. Proposals were received from C&P Telephone Co. and Appellant. The evaluation committee recommended award to C&P.
3. Appellant filed a written protest of the award of the contract to C&P on August 1, 1989. In its protest, Appellant alleged that:

- a. C&P was awarded a contract without submitting a bid.
- b. The point system used in the evaluation process was not assigned accurately.
- c. The evaluators were unqualified.

Appellant's attorney also requested additional time to review certain matters concerning its protest and to provide more information as he would be out of town on vacation from August 3, 1989 to August 14, 1989.

4. By letter dated August 3, 1989, the DGS procurement officer issued a final decision denying Appellant's protest. This letter was sent by certified mail. The receipt that was returned to DGS was signed by a secretary in Appellant's attorney's office, and it shows that the letter was delivered on August 11, 1989. The postman who executed the receipt wrote "8-10-89" and subsequently changed the receipt to show the correct date of delivery as "8-11-89" or August 11, 1989. The letter itself has the initials of another secretary in Appellant's attorney's office marked with the date "8/14/89".

5. Appellant filed an appeal with this Board on August 22, 1989, eleven days after receipt of the procurement officer's final decision in its attorney's office.

6. On August 25, 1989, DGS filed a Motion to Dismiss Appellant's appeal. The basis for this motion was the deadline for filing an appeal was August 21, 1989, ten days after Appellant's receipt of the procurement officer's final decision. DGS states that as a result of the late filing of the appeal the Board lacks jurisdiction to hear it.

DECISION

Md. Ann. Code, State Finance and Procurement Article, ¶15-220 provides that an appeal from an agency's denial of a protest shall be filed "within 10 days after receipt of the notice of a final action." Accord COMAR 21.10.02.10A DGS's Motion to Dismiss alleges that Appellant's appeal to this Board was untimely as it was filed on August 22, 1989, eleven days after Appellant received the procurement officer's final decision.

Appellant maintains that it received the procurement officer's final decision on August 14, 1989 that being the date marked on the letter by Appellant's attorney's secretary. However, for purpose of establishing the

filing deadline, this Board finds that Appellant actually received the procurement officer's final decision on August 11, 1989. Finding of Fact No. 4. Alternatively, Appellant maintains that it had requested the procurement officer to allow it time to provide additional information regarding its protest. Appellant had informed the procurement officer that its attorney's unavailability for the two weeks immediately following the filing of the protest would delay a determination by Appellant as to any additional information that it might like to submit. Appellant contends that it was prejudiced, since the DGS procurement officer never acted on its request for time to provide additional information regarding its protest and issued his final decision. However, based on a subsequent review of its records Appellant would not have had any additional information to submit to the DGS procurement officer regarding its protest.

Tr. 19.

We believe it essential that State procurement contracts be awarded as expeditiously as possible subject to the requirements of Maryland's procurement statute and regulations. State agencies thus are not required to hold a decision on a protest in abeyance and thereby possibly delay contract award and contract performance in order to accommodate the schedule of a disappointed offeror who protests contract award to another. COMAR 21.10.02.09 thus provides that the procurement officer shall make a decision on a protest as expeditiously as possible after receiving all the information he deems relevant.

Accordingly, we hold that Appellant's appeal filed one day late was untimely pursuant to Md. Ann. Code, State Finance and Procurement Article, ¶15-220 which establishes a ten day deadline from the date of receipt of a procurement officer's decision denying a protest for filing appeals with this Board. The Appeals Board thus lacks jurisdiction over the appeal. Rohm Mid-Atlantic, MSBCA 1161, 1 MSBCA ¶64 (1983); Jorge Company, Inc., MSBCA 1047, 1 MSBCA ¶20 (1982).

For the foregoing reasons, therefore, Appellant's appeal is dismissed with prejudice.

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