

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of Transitional)
Technology, Inc.)
Under Department of Housing &) Docket No. MSBCA 1527
Community Development IFB)
for 8mm Tape Drive Backup)
System)

October 17, 1990

Bid Protest - Timeliness - The requirements of COMAR 21.10.02.03B that a protest "shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier" is substantive in nature and must be strictly construed.

APPEARANCE FOR APPELLANT: Candace P. Diel
Vice President-Sales &
Marketing
Anaheim, CA

APPEARANCE FOR RESPONDENT: Roger Fink
Assistant Attorney General
Annapolis, MD

APPEARANCE FOR INTERESTED PARTY: Kevin A. Connifey
Micro Technology Vice President
Reston, VA

OPINION BY MR. PRESS

Appellant files a timely appeal of a Department of Housing & Community Development (DHCD) procurement officer's final decision denying its bid protest.

Findings of Fact

1. On May, 4, 1990, DHCD issued an Invitation for Bid (IFB) to obtain "a 100% VAX/VMS and HSC compatible tape backup unit. The unit must be 100% compatible with DECTA/TMSCP emulation and use a MA-90 STI architecture to ensure HSC compatibility." (Agency Report, P-1).

2. The MA90-STI was specified, because it allows both tape drives to operate simultaneously. Apparently it is faster than the basic

STI (Standard Tape Interface) when both tapes are being used. (Agency Report, P-1).

3. Three bids were received and opened on May 14, 1990. Thereafter, Ms. Sue Turner the procurement officer determined based on technical input from Mr. Will DeKrone of DHCD staff that bids of Appellant and another bidder were nonresponsive because both had submitted bids for tape drives that used the basic STI, not the MA-90 STI. (Agency Report, P-1).

4. Ms. Turner then notified Appellant by phone that it was not selected for contract award and advised Ms. Ileana¹, a sales representative for Appellant, she would have to confer with Mr. DeKrone for the technical reasons the bid was rejected. (Agency Report, P-2).

5. On June 11, 1990, Mr. DeKrone informed Ms. Ileana of the reasons DHCD required the MA-90 STI standard and why Appellant did not meet the technical specifications. Apparently, Ms. Ileana agreed Appellant's proposed equipment did not meet specifications. (Agency, Report P-2).

6. On June 26, 1990, Marjorie Bach, Appellant's Regional Sales Manager, wrote to Mr. DeKrone stating it was her belief the contract was awarded to another bidder based on DHCD's misunderstanding of Appellant's product. Ms. Bach also requested "for an application to contest a Bid." (Agency Report, P-3).

7. On July 2, 1990, DHCD responded to Ms. Bach's June 26, 1990 letter treating it as a protest and issued a final agency decision

¹The record does not disclose Ms. Ileana's last name.

denying Appellant's protest as untimely.

8. On July 13, 1990, Appellant filed an appeal with the Appeals Board asserting that its product in fact met the specifications of the IFB.

Decision

Appellant requested a hearing and was notified of the date to appear before the Appeals Board. The Appellant did not appear and the Appeals Board has decided this case based on the written record.

The Appellant alleges it was unable to ascertain from the IFB the information it needed to protest an award. Appellant further alleges it made several unsuccessful attempts to secure from DHCD personnel technical specifics in order to formulate its protest.

The record reflects Appellant did not send a letter of protest to DHCD until June 26, 1990.

Appellant's protest was rejected by DHCD as being untimely. COMAR 21.10.02.03B provides that bid protests, other than those based upon alleged improprieties in the solicitation, "shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier."

The Board finds from the record that Appellant's representative, Ms. Ileana, knew the reasons Appellant was not selected for award, by June 11, 1990 when the technical reasons for rejection of Appellant's bid were conveyed to her by Mr. DeKrone of DHCD and therefore as of that date the basis for a protest was known.

This Board repeatedly has held that the timeliness requirements of COMAR are substantial in nature and must be strictly construed since the rights and interests of other parties are at stake. International Business Machines, MSBCA 1071, 1MSBCA ¶42(1982) at 5; Pyramid Cleaning, Maintenance and Supply, Inc., MSBCA 1099, 1MSBCA ¶42(1983) at 4. Therefore, Appellant's protest was required to have been filed not later than seven days from June 11, 1990. It was not filed until June 26, 1990 and thus was untimely.

Accordingly, we deny the appeal.