

**STATE OF MARYLAND**  
**BOARD OF CONTRACT APPEALS**  
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**SUMMARY ABSTRACT**  
**DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

Docket No. 2673	Date of Decision: 10/15/09
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification:	Under Salisbury University IFB No. SU-09067-CP
Appellant/Respondent:	Williamsport Cabinetry, LLC Salisbury University

Decision Summary:

Representation requirements before the Board - Regulatory requirement that a corporation, partnership, or joint venture shall be represented before the Board by an attorney licensed to practice in Maryland, is mandatory.

Representation requirements before the Board - Failure to follow same - Failure of an entity required to be to be represented by counsel as required by regulation results in that entity being unable to pursue an appeal before the Board.

Protest Appeal- Requirement for Statement of Grounds for Appeal - The regulatory requirement that a bid protest notice of appeal contain a statement of the grounds for the appeal is mandatory. Failure to supply such a statement results in dismissal of the appeal.

Minority Business Enterprise (MBE) - MSBCA without jurisdiction to consider MBE bid protest appeal - Regulatory prohibition on consideration of bid protest regarding "any act or omission by a procurement agency" results in no jurisdiction for MSBCA over such protest/appeal grounds. Board therefore dismissed protest appeal ground relating to MBE.

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**BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In The Appeal of )  
Williamsport Cabinetry, LLC )  
 )  
 ) Docket No. MSBCA 2673  
 )  
Under Salisbury University )  
IFB No. SU-09067-CP )

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Joy K. Gaslevic  
Assistant Attorney General  
Baltimore, Maryland

**OPINION BY CHAIRMAN BURNS**

Appellant Williamsport Cabinetry, LLC. has appealed the award of a contract for the Holloway Hall Psychology Department relocation project by Salisbury State University to another bidder. Because of various violations of COMAR, Appellant's appeal to the Board will be dismissed.

**FINDINGS OF FACT**

1. On May 12, 2009, Respondent Salisbury University ("Salisbury") issued an Invitation for Bids ("IFB"), styled by Appellant Williamsport Cabinetry, LLC ("Williamsport") as "IFB #SU-09067-CP", for Salisbury's Holloway Hall Psychology Department relocation project.
2. On June 5, 2009, Salisbury determined that Harper & Sons, Inc. ("Harper") was the apparent low bidder.

3. After Salisbury's evaluation of Harper's bid documents, Salisbury determined that Harper was the low responsive and responsible bidder.
4. On June 9, 2009, Harper was notified of this determination.
5. On June 11, 2009, all other bidders were also notified of this determination.
6. On June 12, 2009, Appellant Williamsport submitted a protest to Salisbury regarding this award.
7. Williamsport claimed an alleged mathematical error on Harper's Part V Bid Form and alleged errors on Harper's Minority Business Enterprise ("MBE") Attachment B.
8. By way of a letter dated July 24, 2009, the Procurement Officer responded to Williamsport's June 12, 2009 Bid Protest.
9. Specifically, with regard to Williamsport's challenge to Harper's MBE submissions, Salisbury rejected that challenge as impermissible under COMAR 21.11.03.14. (no protest may be filed concerning any act or omission by a procurement agency concerning MBE issues). To the extent that Williamsport's protest dealt with acts or omissions with regard to Harper's MBE submissions, Salisbury advised Williamsport that its protest was improper and would not be considered. Since a.
10. The decision letter indicated specifically that since a protest could not be filed on this MBE issue, the University would not be issuing a procurement officer's final decision regarding this issue.
11. In addition, Salisbury did address Williamsport's second protest argument alleging errors on Harper's bid forms.
12. While Williamsport did not specifically identify what it considered to be an error on Harper's Bid Form, Salisbury

stated that it had found an obvious, apparent error on the Part V Bid Form submitted by Harper. The sum of the Base Contract Price (\$141,900) and Alternate 1 (\$8,180) was entered as \$150,000 when it obviously should have been entered as \$150,080.

13. Salisbury further explained that Consistent with the University System of Maryland Procurement Policies and Procedures, Section V(B)(12)(c), when there is such an obvious error on the face of the bid and the intended correction is clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Therefore, Salisbury informed Williamsport that Salisbury had appropriately corrected the bid to the intended correct bid amount of \$150,080 and that it was rejecting Williamsport's protest on this point and issuing a Procurement Officer's final action regarding this protest ground.
14. By way of a letter dated July 28, 2009, Williamsport filed an Appeal with the Maryland State Board of Contract Appeals ("Board") regarding this matter.
15. Williamsport's Appeal to the Board was received on July 30, 2009 and docketed by the Board on August 3, 2009.
16. In its July 28, 2009, letter Williamsport failed to include "a statement of the grounds of appeal" as required by COMAR 21.10.07.02 C. (3).
17. Williamsport has not supplemented its Appeal.
18. On August 20, 2009, Salisbury University filed a "Motion to Dismiss and for Final Summary Decision".
19. Williamsport has not responded to the University's Motion to Dismiss and for Final Summary Decision.

20. As of the date of this decision, Williamsport is not, and has never been, represented by counsel.
21. No hearing was requested by any party regarding this Motion, which will, therefore, be decided on the record presented herein.

### Decision

Williamsport's Appeal must be dismissed as a result of various violations of regulatory requirements.

First, Williamsport's appeal involves Minority Business Enterprise ("MBE") determinations by the University. Such appeals are clearly not sustainable before this Board since they involve MBE determinations by the procurement officer and the procuring agency. COMAR 21.11.03.14 states:

.14 Protest

A protest under COMAR 21.10.02 (the regulation providing for protests such as SMC's) may not be filed:

- A. To challenge a decision whether an entity is or is not a certified MBE; or
- B. Concerning any act or omission by a procurement agency under this chapter.

This Board has been clear that to the extent that an appeal deals with alleged acts or omissions by an agency regarding MBE issues, no bid protest concerning such alleged acts or omissions may be filed. See *E.g.*, Southern Maryland Cable, Inc., MSBCA 2538, \_\_\_ MSBCA \_\_\_ (2006); James F. Knott Construction Co., Inc., MSBCA 2437, \_\_\_ MSBCA \_\_\_ (2004). Therefore, this appeal is clearly precluded by COMAR 21.11.03.14.

Second, the Board finds that Williamsport's notice of appeal does not comply with the requirements of COMAR

21.10.07.02. C. (3) in that it fails to contain a statement of the grounds of appeal.

COMAR 21.10.07.02. C. requirements are clear, simple and not particularly onerous. A party seeking relief from this Board must fulfill certain minimal requirements when filing a notice of appeal. One of those requirements is a statement of the grounds for the appeal. Williamsport's notice of appeal letter contains no such statement. As a result of this failure, the Board cannot determine what the grounds of Williamsport's Appeal consist of. Williamsport's Appeal, failing to comply with COMAR 21.10.07.02. C. (3), must be dismissed. See also, NumbersOnly-Nusource JV, MSBCA 2303, 5 MSBCA ¶521 (2002).

Williamsport's Appeal might not have suffered this fate had Williamsport complied with the requirements of COMAR 21.10.05.03.A. Unfortunately, Williamsport has once again failed to follow a mandatory COMAR requirement and its appeal will be dismissed because of this as well.

Williamsport Cabinetry, LLC, is a limited liability corporation. COMAR 21.10.05.03 A. states an individual may appear before the Board in person or may be represented by an attorney, but: "Corporations, partnerships, and joints ventures shall be represented by an attorney at law licensed in Maryland." Williamsport has no such representation.

Williamsport was specifically notified of this requirement by the Board by way of a letter dated August 3, 2009. Clearly, Williamsport had actual, as well as constructive, knowledge of the requirement for representation by counsel.

Williamsport cannot maintain the prosecution of this action without representation by an attorney. No attorney represents Williamsport in this Appeal. Over two months have

passed since the filing of this Appeal by Williamsport - ample time for Williamsport to have complied with the requirements of COMAR 21.10.05.03 A.

As noted, Williamsport's notice of appeal is fatally flawed. An attorney promptly retained by Williamsport could have corrected that flaw. Williamsport also has not responded to the University's Motion to Dismiss. Again, competent counsel would have done so.

The requirements of COMAR 21.10.05.03 are not suggestions or hints; they are requirements. These requirements make sense, as this case amply illustrates.

Williamsport's failure to comply with the requirements of COMAR 21.10.05.03 A. result in another ground for dismissal of this Appeal.

For the reasons noted, Williamsport's Appeal will, therefore, be dismissed.

Wherefore, it is Ordered this            day of October, 2009 that the appeal of Williamsport Cabinetry, LLC in the above-captioned matter is dismissed with prejudice.

Dated:

\_\_\_\_\_  
Michael W. Burns  
Chairman

I Concur:

\_\_\_\_\_  
Michael J. Collins  
Board Member

\_\_\_\_\_  
Dana Lee Dembrow  
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

**(a) Generally.** - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

**(b) Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

\* \* \*

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2673, appeal of Williamsport Cabinetry, LLC under Salisbury University IFB No. SU-09067-CP.

Dated:

\_\_\_\_\_  
Michael L. Carnahan  
Deputy Clerk