

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

**In the Appeal of
Patapsco Mechanical LLC**

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**Under Maryland Transportation
Authority
IFB No. MT-00211391**

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Docket No. MSBCA 3319

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Appearance for Appellant

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**John L. Senft, Esq.
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York, PA 17402**

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Appearance for Respondent

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**Babatunde Adedapo, Esq.
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OPINION AND ORDER BY MEMBER STEWART

The instant appeal is decided on the record which consists of Appellant’s Notice of Appeal, Respondent’s Agency Report, and Appellant’s Response to Agency Report. Neither party requested a hearing. The Maryland State Board of Contract Appeals (“Board”) denies the appeal because Appellant did not file a timely protest before bid opening to challenge the solicitation’s minimum experience criteria for bidders.

PROCEDURAL HISTORY AND FINDINGS OF FACT

On January 10, 2025, the Maryland Transportation Authority (“MDTA”) issued Invitation for Bids No. MT-00211391 (“IFB”) on eMaryland Marketplace Advantage for HVAC and ATC Maintenance and Repairs at MDTA William Preston Lane, Jr. (WPL) Bridge Facility.

The IFB in Section 1.1 Bidder Minimum Qualifications included Subsection 1.1.1:

The Heating, Ventilation and Air Conditioning (HVAC) Contractor, as a Company or Firm, shall have a minimum of five (5) years of experience maintaining HVAC/Automatic Temperature Control (ATC) systems of similar scope, size and type identified herein (i.e., commercial buildings, tunnels, etc.). **Experience of individual personnel in the Company or firm shall not count towards meeting the required five (5) years of experience for the Contractor as a firm or business. This experience must be under respondent's legal company name from which this response has been submitted.** MDTA shall conduct a search via the Maryland Department of Assessments and Taxation (SDAT) website to verify the company name. (emphasis added).

A pre-bid conference was held on January 21, 2025, via TEAMS web-based platform. Bids were opened on February 21, 2025. The MDTA received three bids:

1. Patapsco Mechanical LLC \$1,086,505.00
2. Denver-Elek, Inc \$1,111,523.00
3. EASI \$1,168,944.00

Patapsco Mechanical LLC ("Patapsco") is a single-member limited liability company formed and registered with the Maryland Department of Assessments and Taxation on February 4, 2021. Patapsco's sole owner, Steven Downey, had approximately sixteen years of experience in HVAC and ATC service, maintenance and repairs at the time of Patapsco's bid. Patapsco employs six service technicians who have over fifty years of combined experience in HVAC and ATC service, maintenance and repairs. Mr. Downey formed Patapsco in connection with the 2021 purchase of the assets of M&E Sales, Inc., an HVAC contractor which had operated in Maryland since 2001. Several employees of M&E Sales, Inc. are still employed with Patapsco.

On March 24, 2025, the Procurement Officer ("PO") Margaret Carlisle sent a letter to Mr. Downey rejecting Patapsco's bid and gave the following reason:

Patapsco Mechanical LLC was established in February of 2021, and therefore does not meet the minimum five (5) years of Contractor experience as required in the IFB.

Therefore, in accordance with COMAR 21.06.01.01, the Procurement Officer has determined that the Bid submitted by Patapsco Mechanical LLC is non-responsive, and pursuant to COMAR 21.06.02.03, the Bid is rejected.

The MDTA received an initial email from Mr. Downey, on April 1, 2025, and a second email on April 2, 2025, protesting the rejection of its Bid (“the Protest”). In the April 1 email, Mr. Downey stated:

The company has been in business since 2001 first as M&E Sales Inc and in 2021 when I bought the company, we did an asset purchase and rebranded the company as Patapsco Mechanical (partially because the previous owner had developed a poor reputation for paying suppliers and subcontractors). It was an ownership change but the office, personnel (aside from ownership), contracts (state and local contracts included) were transitioned to the new legal entity and all were reviewed and approved by DGS, BCPS, University of Maryland, DLLR, etc. I had 12 years of HVAC experience prior to purchasing the company. We have performed work for the state continuously as M&E Sales and later as Patapsco Mechanical and the state approved the change to switch then *[sic]* entity from M&E to Patapsco on the IDIQ IQC Statewide HVAC and Boiler contract and a DLLR HVAC Maintenance contract. We were also awarded multiple State Highway Hanover HVAC repair contracts that had the same requirement and years under previous ownership was counted as experience. We have performed over \$ 15M of work for the state since we purchased the company and this has never been an issue.

The April 2 Protest stated:

I am writing on behalf of Patapsco Mechanical LLC to formally protest the recent rejection of our bid submission on the grounds that our company has not been in business for the required five-year period.

The decision to reject our bid on this basis unfairly biases against Patapsco Mechanical LLC by disregarding the recognized and approved continuation of M&E Sales’ experience and qualifications. It also undermines the purpose of experience requirements, which is to ensure a contractor’s capability and track record—something Patapsco clearly possesses.

We respectfully request reconsideration of this determination and would be glad to provide any additional documentation necessary to support our position.

On April 10, 2025, the PO denied Patapsco’s protest on the basis that Patapsco did not meet the number of years of experience required in Subsection 1.1.1 of the IFB. Patapsco timely filed its Notice of Appeal with the Board on April 21, 2025. The MDTA filed its Agency Report on May 2, 2025. Finally, on May 7, 2025, Patapsco filed its Response to Agency Report asserting, in pertinent part, that the IFB’s five-year experience requirement is *per se* arbitrary and capricious. Patapsco concedes, however, that the underlying facts are generally undisputed, and therefore does not request a merits hearing.

APPLICABLE LAW

COMAR 21.10.02.03A states that “[a] protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals.” COMAR 21.10.02.03C states that “[a] protest received by the procurement officer after the time limits prescribed...may not be considered.”

The requirements for filing protests that are set forth in COMAR 21.10.02.03 are substantive and may not be waived. Failure of a bidder to meet the substantive timeliness requirements of COMAR 21.10.02.03 deprives this Board of jurisdiction. *See A.J. Billig & Co., LLC t/a A.J. Billig & Co.*, MSBCA No. 3096 (2018); *FMB Laundry, Inc.*, MSBCA No. 2136 (1999); *Delaware Elevator. Inc.*, MSBCA No. 1741 (1993); *Kennedy Temporaries v. Comptroller*, 57 Md. App. 22 (1984).

DECISION

If a bidder has concerns about a specification or minimum requirement in a solicitation, then the bidder should seek clarification before submitting a bid. Pre-bid conferences are conducted to permit inquiries regarding the solicitation and its

requirements. If the bidder disagrees with the response, then it should file a protest before the date for bid opening. *See, e.g., Master Security Company, LLC*, MSBCA No. 3062 (2018); *National Elevator Co.*, MSBCA No. 1276 (1986). COMAR 21.10.02.03A clearly mandates that challenges to the specifications and requirements be protested before bids are opened.

In *Independent Testing Agency, Inc.*, MSBCA No. 1908 (1995), the Board addressed a factual scenario similar to that presented in this Appeal. It examined a minimum experience provision in a solicitation requiring that “the company or corporation must have five (5) years experience, not individual employees or combinations of employees, working on major types of electrical equipment.” *Id.* at 2. The Board denied the appellant’s protest as untimely under COMAR 21.10.02.03A because appellant did not file a protest challenging 5-year experience requirement as a company or corporation prior to the due date for receipt of initial proposals. *Id.*

While denying the appeal because the protest was untimely filed, the Board in *Independent Testing Agency, Inc.* nonetheless reaffirmed “that experience of officials gained prior to the formation of a corporation or other business entity may be considered in determining whether a bidder or offeror meets experience criteria, **at least where the responsibility requirement does not specifically preclude consideration of prior experience.**” *Id.* (emphasis added).

As in *Independent Testing Agency, Inc.*, Subsection 1.1.1 of the IFB in this Appeal unambiguously states that the bidder, as a legal entity, must possess a minimum of five years of experience in maintaining HVAC/ATC Control systems that are comparable in scope, size, and type. This requirement applies specifically to the entity itself, rather than

to individual personnel employed by the entity. Patapsco, which was formed on February 4, 2021, did not and could not meet the very specific 5-year HVAC minimum experience requirement of this specification either when it submitted its bid, or on February 21, 2025, when bids were opened, because it had not yet legally existed for 5 years. This fact being undisputed, Patapsco instead argues that this specification unduly and arbitrarily limits otherwise qualified contractors from participating in this procurement.

Given that Patapsco failed to file a protest challenging the clear and unambiguous minimum experience requirements of Subsection 1.1.1 of the IFB before bid opening, however, its protest is untimely. Having resolved this Appeal on a procedural matter, we decline to opine as to the merits of the Appeal as to whether the minimum experience requirement of Subsection 1.1.1 of the IFB arbitrarily goes beyond the minimum needs of the MDTA.

CONCLUSION

Because Appellant did not file its protest challenging the minimum experience requirements set forth in Subsection 1.1.1 of the IFB before bid opening, as required by COMAR 21.10.02.03, the Board dismisses the Appeal as untimely.

ORDER

Based on the foregoing, it is this 5th day of June 2025, hereby:

ORDERED that Patapsco's Mechanical, LLC's Appeal is DENIED.

/s/
Michael J. Stewart Jr., Esq., Member

I concur:

/s/
Lawrence F. Kreis, Jr., Member

/s/
Senchal Dashiell Barrolle, Esq., 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.

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.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals Opinion and Order in Docket No. MSBCA 3319, The Appeal of Patapsco Mechanical LLC., under the Maryland Transportation Authority Invitation for Bids No. MT-00211391.

Date: June 5, 2025

/s/
Ruth W. Foy
Clerk