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

Docket No. 2549	Date of Decision: 10/12/06
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under SHA Contract No. AA3495174	
Appellant/Respondent: Baltimore Pile Driving & Marine Construction, Inc. State Highway Administration	

Decision Summary:

Bid Responsiveness - Rubber Stamp Signature - Signed verification of a bid using a rubber stamp signature is sufficient to render a bid responsive when the rubber stamp signature is imprinted by an authorized agent whose authority is verified by multiple hand-subscribed signatures attesting to the authenticity and authority of the agent using a rubber stamp and there is a past pattern that use of a rubber stamp is ordinarily accepted on business documents and the bid bond is fully and properly executed and enforceable.

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

In The Appeal of Baltimore Pile)
Driving & Marine Construction,)
Inc.)
) Docket No. MSBCA 2549
)
Under SHA Contract No.)
AA3495174)

APPEARANCE FOR APPELLANT: Wayne S. Goddard, Esq.
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APPEARANCE FOR RESPONDENT: Scot D. Morrell
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APPEARANCE FOR INTERESTED PARTY: Robert M. Wheeler, Esq.
(C.A. Kibler Co.) Finksburg, Maryland

OPINION BY BOARD MEMBER DEMBROW

The sole issue raised in this appeal is whether the use of a rubber stamp of a signature on the Comprehensive Signature Page of a State Highway Administration (SHA) contract is sufficient to constitute a signature, or in the alternative, that a manually subscribed signature is necessary to render a bid responsive. This Board determines that under the particular verification circumstances here presented, the submission of the Comprehensive Signature Page of the bid documents bearing a rubber stamp imprint as a signature is adequate to make the low bid responsive.

Findings of Fact

1. On or about May 11, 2006 SHA opened bids for a certain contract for roadwork known as Contract No. AA3495174.
2. Of eight (8) firms submitting bids, appellant Baltimore Pile Driving and Marine Construction, Inc. (BPDI) offered the low bid, agreeing to perform the required work at a charge of approximately \$991,850, or 13% lower than the second lowest bid, offered by interested party C.A. Kibler Co. (Kibler) which submitted a bid price of \$1,100,000.
3. By correspondence dated May 12, 2006, Kibler protested the award of the contract to BPDI on the basis that the low bid submitted by BPDI was nonresponsive.
4. The basis of Kibler's allegation of nonresponsiveness was that the BPDI bid submission did not include an original manually subscribed signature by the principal of BPDI as purportedly required by SHA's bid requirements, which stated as follows: "THE BIDDER IS HEREBY NOTIFIED THAT THIS DOCUMENT SHALL BE SIGNED IN INK IN ORDER FOR THE BID TO BE ACCEPTED. BY SIGNING, THE BIDDER CERTIFIES THAT HE/SHE WILL COMPLY IN EVERY ASPECT WITH THESE SPECIFICATIONS." (Emphasis in original at Page 1 of 2 of SHA's Comprehensive Signature Page, also known as page 167 of Appellant's Exhibit No. 1.)
5. BPDI's offer to perform SHA work in this matter was affixed with the signature in ink of David B. Lawrence on behalf of BPDI.
6. David B. Lawrence is the President by BPDI and is authorized by BPDI to submit bids on behalf of BPDI and enter into binding contracts on behalf of BPDI.

7. The above referenced signature of David B. Lawrence was not manually subscribed but was placed on Page 2 of 2 of SHA's Comprehensive Signature Page, also known as page 168 of appellant's Exhibit No. 1, by use of a rubber stamp facsimile of the actual signature of David B. Lawrence.
8. The rubber stamp signature more specifically referenced above was placed on the subject bid document by the maker thereof, namely, David B. Lawrence.
9. David B. Lawrence routinely uses a rubber stamp of his signature in the course of his business activity, including the past execution of thousands of business checks which are and have been universally honored by banking institutions.
10. David B. Lawrence had previously submitted bid documents to SHA bearing the rubber stamp of his signature and those prior unrelated bid submissions were accepted by SHA without question in awarding snow removal contracts previously entered into by and between SHA and BPDI for which BPDI performed the services contracted by SHA. (Transcript, Page 31.)
11. The uncontested allegation of the motivation of David B. Lawrence in using a rubber stamp to affix his signature to the Comprehensive Signature Page of the instant SHA bid document was that in a previous unrelated purchase his manually subscribed signature was questioned due to the non-uniformity of its appearance. (Transcript, Page 42.)
12. Julie A. Lawrence is the Corporate Secretary of BPDI.
13. SHA's Comprehensive Signature Page for this contract bears the original manually subscribed signature of Julie A. Lawrence as Corporate Secretary of BPDI.

14. The intent of David B. Lawrence in affixing a rubber stamp of his signature to the subject bid was to bind BPDI to the subject offer of contract performance.
15. The intent of Julie A. Lawrence in manually signing the subject signature page as Corporate Secretary of BPDI was to attest to the validity of the signature of David B. Lawrence as President of BPDI in binding BPDI to the terms of the bid.
16. The subject signature page also bears the unique raised permanent impression of the corporate seal for BPDI, which was imprinted onto the original of the document by the aforesaid duly authorized Corporate Secretary for BPDI, namely, Julie A. Lawrence.
17. Page one of the Bid Bond submitted by BPDI with its bid (Appellant's Exhibit No. 2) bears three (3) manually subscribed original signatures and two (2) imprinted corporate seals, including the imprinted corporate seals for BPDI and Developers Surety and Indemnity Company, as well as the rubber stamped signature of David B. Lawrence as President of BPDI, the original manually subscribed signatures of Julie A. Lawrence as Corporate Secretary of BPDI attesting to the rubber stamp signature of David B. Lawrence as President of BPDI, and the original manually subscribed signatures of the bonding agent, Contractor's Services, Inc., through Darlene Miller-Harrison, and the attorney in fact for the surety, Developers Surety and Indemnity Company, namely, Michael J. Buchanan.
18. By correspondence dated June 22, 2006, SHA's procurement officer in this matter issued a final decision in response to the Kibler protest of the prior month in which the procurement officer stated: "The bid

bond here contains only rubber-stamped signatures of Baltimore Pile Driving *and the surety*. For this additional reason, the SHA rejects the bid of Baltimore Pile Driving for the contract as nonresponsive." (Page two, emphasis supplied.) And later: "The bid bond here contains a rubber-stamped signature not only from Baltimore Pile Driving, but from the surety as well... I have determined that the rubber-stamped signature on the bid bond casts doubt on the liability of the surety rendering the bid bond defective. Thus I reject the bid of Baltimore Pile Driving as nonresponsive." (Page three.)

19. The June 22, 2006 factual allegation of SHA's procurement officer as set forth in Paragraph No. 17 above to the effect that the surety document failed to include an original manually subscribed signature for the surety was and is factually incorrect.

Decision

The Maryland State Board of Contract Appeals (MSBCA) has not previously rendered an opinion on the subject of what may be required to constitute a sufficient signature to bind an offeror to its bid, thereby rendering a bid responsive. This question is not only significant but timely as well, in part because of the 21st century advent of e-commerce and the relatively recent proliferation and ease of new internet and other telecommunications technologies; however, the import of the instant holding of the Board must be confined to the peculiar circumstances of the rubber stamped signature here in question.

What is a "signature?" The *American Heritage Dictionary* defines the word in the alternative as:

"1. The name of a person as written by himself. 2. A distinctive, mark, characteristic, or sound effect indicating identity. [and] 3. The act of signing one's name."

Similarly, *Webster's Dictionary* offers the following guidance on the meaning of the word, "signature:"

"1. a person's name written by himself; also, a representation of this in a mark, **stamp**, deputy's handwriting, etc. 2. the act of signing one's name [and] 3. an identifying characteristic or mark." (Emphasis supplied.)

Black's Law Dictionary defines "signature" as:

"The act of putting down a man's [sic] name at the end of an instrument to attest its validity, the name thus written. A "signature" may be written by hand, printed, **stamped**, typewritten, engraved, photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made. Smith v. Greenville County, 188 S.C. 349, 199 S.E. 416, 419. Maricopa County v. Osborn, 60 Ariz. 290, 136 P.2d 270, 274. And whatever mark, symbol or device one may choose to employ as representative of himself is sufficient. Griffith v. Bonawitz, 73 Neb. 622, 103 N.W. 327, 339. See Sign." (Emphasis supplied.)

Black's further elaborates on the meaning of the verb, "sign," as follows:

"To affix one's name to a writing or instrument, for the purpose of authenticating it, or to give it effect as one's act.

McCall v. Textile Industrial Institute, 189 N.C. 775, 128 S.E. 349, 353. To attach a name or cause it to be attached to a writing by any of the known methods of impressing a name on paper. In re Covington Lumber Co., D.C.Wash., 225 F. 444, 446. To affix a signature to; to ratify by hand or seal; to subscribe in one's own handwriting. *Webster, Dict.*; Knox's Estate, 131 Pa. 230, 18 A.1021, 6 L.R.A. 353, 17 Am.St..Rep. 798; In re Manchester's Estate, 174 Cal. 417, 163 P. 358, 359, L.R.A.1917D, 629, Ann.Cas.1918B, 227. See also, Miner v. Larney, 87 N.J.L. 40, 94 A.26, 28."

Historically it has long been recognized that the intent of the maker is the defining characteristic of what is necessary to constitute a legally binding and valid signature, thus enabling persons to use as their signature any mark which the person may choose.

The Restatement (Second) of Contracts § 134 (1979) states: "the signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signor" and in § 348: "the signature may be written in pencil, typed, printed, **made with a rubber stamp**, or impressed into the paper." (Emphasis supplied.)

In its description of the Statute of Frauds 72 AmJur.2d §358 (1974) provides:

"There is no requirement that the signature to a memorandum required by the statute of frauds be in a particular form, and to satisfy the statute of frauds the memorandum need not be signed in ink....The general rule is that **the signature may be affixed by a stamp**, or it may be typewritten or printed mechanically, if, but only if, by signing in any of these methods the party whose signature is essential intends to authenticate the instrument as his act."

(Emphasis supplied.)

Significantly, the Uniform Commercial Code (UCC) adopted in Maryland similarly allows latitude in the maker's choice of methods for affixing his or her signature to a binding contract, defining the word, "signed," to include "any symbol executed or adopted by a party with present intention to authenticate a writing." See *Md. Code Ann. Commercial Law* §1-201(39). And the Maryland Uniform Electronic Transactions Act also statutorily provides for the legitimacy of signatures other than those which are manually subscribed. See *Md. Code Ann. Commercial Law* § 21-101, *et seq.*

In Maryland, the Court of Appeals specifically noted the generally accepted view that a signature is sufficient even when it is not manually subscribed, stating in State v. Romulus, 315 Md. 526, 531, 555 A.2d 494 (1989) that:

"In the absence of a statute prescribing the method of affixing a signature, it may be affixed in many different ways. It may be written by hand, and, generally, in the absence of a statute otherwise providing, it may be printed, **stamped**, typewritten, engraved, photographed or cut from one instrument and attached to another."
(Emphasis supplied.)

Romulus, *Id.*, did not concern the execution of a contract, but it nonetheless provides guidance to this Board on the judicially imposed requirements of execution of a document when a signature is required to give a document legal validity in Maryland.

In several important respects, public procurement is a very unusual creature of contract law. Thus, the outcome of this inquiry does not turn on the application of ordinary

authorities governing private contracts, such as the UCC, Statute of Frauds or other statutory provisions only some of which are referenced above. A variety of special statutes, rules, requirements, cases and customs attach to Maryland state government procurement activity that do not apply to ordinary contracts between private parties. Principal among these in the present context is the obligation and responsibility of the State to be able to identify a binding offer not from extraneous material or collateral inquiry but solely from the four (4) corners of the document(s) submitted as an offeror's bid. It is essential that offerors are on equal footing and that no offeror receives the benefit of the proverbial "two bites at the apple." Here, the undisputed testimony reveals that the rubber stamp ink signature of the President of BPDI was placed onto BPDI's bid by the President himself, and that the rubber stamp that was used was secured in a locked box to insure that only authorized agents of the corporation could gain access to it. Had Kibler and SHA known this information at the time of the opening of bids, the instant appeal would quite likely not have gone forward. But at the time of the opening of bids, neither SHA nor any of the bidders other than BPDI had this information.

The State must be placed on unequivocal notice of the nature, extent and absolute unqualified commitment of each offer in order to assure that the only bids considered by the State are those which are fully responsive to a solicitation, invitation for bids (IFB) or request for proposals (RFP) by obligating each offeror to perform all of the duties required by a contract. Otherwise a purported low offer could be withdrawn after the State's acceptance. Were it not for this peculiarity of competitive sealed

proposals there would be little question but that the identical offer of BPDI to a private contracting entity would constitute a binding offer sufficient for acceptance because the rubber stamp signature of BPDI's President with the intent to evidence its offer would be firmly sufficient for that purpose in ordinary contract law. It is only because of the special nature of state procurements, specifically the necessity of certainty in identifying responsiveness at the time of bid opening, that the use of a rubber stamp in place of a manually subscribed signature makes the resolution of the instant dilemma a closer call.

The facts in this case are easily distinguishable from this Board's prior determination that the failure of any signature at all to appear on the Comprehensive Signature Page renders a bid nonresponsive. See Apollo Paving Company, Inc., MSBCA 1092, 1 MSBCA ¶29 (1982), Daisy Concrete, Inc. of Maryland, MSBCA 2338, 6 MSBCA ¶532 (2003) and L.S. Lee, LLC, MSBCA 2463 and 2468, ___ MSBCA ¶___ (2005). In the circumstances at hand, SHA's Comprehensive Signature Page was affixed by BPDI with a signature in ink, as the State required. That signature was verified by the manually subscribed signature of BPDI's Corporate Secretary, who as corporate agent was authorized by BPDI to verify the rubber stamped signature of BPDI's President. Both signatures were accompanied by the raised permanent impression of the corporate seal as additional evidence of the authenticity of BPDI's offer to SHA. The Maryland Court of Appeals has stated, "the main purpose of the corporate seal...is as a prima facie authentication that the document is the act of the corporation." See Rouse-Teachers Properties, Inc. v. Maryland Casualty Company, 358 Md. 575, 586, 750 A.2d 1281 (1999).

In the instant appeal, BPDI's President had authority to bind the corporation to its bid and intended to do just that when he placed a rubber stamp of his signature on BPDI's bid. BPDI's Corporate Secretary had authority to verify the signature of its President and did so. The signatures of BPDI's corporate officers were further authenticated by the permanent impression of its unique raised corporate seal onto the Comprehensive Signature Page, which was imprinted upon that document by an authorized agent of the corporation. We find therefore that BPDI's offer was not susceptible to revocation at the time of acceptance by the State and as a consequence, BPDI's bid was responsive to the State's invitation for bids (IFB).

In addition, this Board holds that BPDI's bid bond was not defective as claimed by the State and the interested party. To protect against the possibility of an offeror attempting to withdraw its bid following acceptance by the State, the State routinely requires, and required in the procurement here considered, a bid bond to insure the State that the offeror of the bid accepted by the State will, promptly following the State's acceptance of the bid, execute subsequent commitments to perform the work agreed to, or otherwise the surety will reimburse the State for any losses incurred. (See Appellant's Exhibit 2 described at Page 59 *et seq.* of the transcript of the hearing in the instant appeal.)

Key to the procurement officer's incorrect determination in this matter appears to be the procurement officer's incorrect factual finding that neither the bid nor the bid bond bore manually subscribed signatures and that therefore neither the bid nor the bid bond was legally valid and binding. This Board has previously determined that an

incomplete bid bond does not necessarily render the bid nonresponsive. See American Paving, MSBCA 2498, ___ MSBCA ¶___ (2005). Although BPDI's bid bond carried only a rubber stamp signature of BPDI's President, that signature was verified by the manual subscription of BPDI's Corporate Secretary, just as the bid itself was. BPDI's bid bond was also manually subscribed by duly authorized representatives of the bonding agent, Contractor's Services, Inc., and the surety company, Developers Surety and Indemnity Company. The bid bond was also accompanied by a Power of Attorney documenting the authority of Michael Buchanan to bind Developers Surety and Indemnity Company to the terms of the bond. Had BPDI failed to perfect post-award contract execution requirements, Developers Surety and Indemnity Company would have been liable to the State for BPDI's breach. To sum, SHA could have safely relied upon BPDI's bid without risk of revocation following determination to award the contract to BPDI.

One additional issue which may be worthy of note is whether this decision recognizes any potential difference between the requirement that a document be affixed with a "signature" and the requirement that a document be "signed." One might conceivably argue that the latter implies the necessity of a manually subscribed mark, while the former may take any of a number of alternative forms, including the imprint of a rubber stamp or corporate seal. However, no party has made such an argument to this Board and the Board believes that to craft an artificial distinction between a document bearing a "signature" and one that is "signed" would likely cause confusion rather than clarification of bidders' requirements.

Finally, in oral argument of counsel, much was made

about the distinction between 48 C.F.R. 14.405 and COMAR 21.06.02.04 on the question of what constitutes a minor irregularity in the context of the absence of a signature on a bid. In Maryland, COMAR identifies a minor irregularity as "one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid or proposal from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors." By contrast, federal regulation opens with identical language, but further enunciates as a specific example of irregularity the:

"failure of a bidder to-- "(c) Sign its bid, **but only** if- (1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or (2) the firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;" (Emphasis supplied.)

Counsel for appellant argues that the absence in COMAR of the aforementioned federal example of the limited circumstances under which a rubber stamp may be acceptable, COMAR is evidence of a deliberate intention to create a different, looser standard in Maryland governing the requirement for signing a bid, allowing the use of a rubber stamp signature without the federal necessity of accompanying the bid with proof of corporate authorization

of the use of a rubber stamp. (See Page 74 of the hearing transcript.) In contrast, the State argues that Maryland procurement follows and customarily should follow federal procurement precedent, including on this point. (See Page 88 of the hearing transcript.) This decision does not reach final resolution of that component of the instant dispute.

If one may classify as a questionable execution the use of an imprinted corporate seal and manually subscribed verification of a rubber stamp of a signature of an authorized corporate officer, that level of imperfection on SHA's Comprehensive Signature Page did not in this instance rise to the level of nonresponsiveness. This contract therefore must be awarded to BPDI.

Wherefore, it is Ordered this day of October, 2006 that the above captioned appeal is sustained.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael W. Burns
Chairman

Michael J. Collins
Board Member

CONCURRING OPINION BY CHAIRMAN BURNS

I concur with the majority opinion in this appeal, but I feel the necessity to make several observations.

It is clear to me that the issue of what constitutes a legally valid and binding signature is not well-resolved. The Respondent's position, that a stamped signature is not a valid signature for purposes of the contract solicitation at issue, is not unreasonable. This is especially true considering the Respondent's point that had the Appellant notified SHA, in advance of Appellant's bid submission, that a rubber stamp signature would be utilized by Appellant for purposes of "signing" the contract solicitation at issue the usage of a stamped signature would have been acceptable to the State.

The Respondent's concern is valid: when bids are opened how (absent advance notice) is the State to know that the use of a stamp to "sign in ink" results in a bid to which the bidder can be legally bound?

Appellant has several points to answer this concern. First, the stamped signature is utilized by Appellant throughout Appellant's bid submission. Second, the stamped signature was attested to as valid by the Appellant's Corporate Secretary. Third, in at least one prior instance, the Appellant utilized a stamp for signing bid documents in another bid process without objection by the State (in fact, this prior utilization by Appellant was with SHA concerning that bid).

In summary, Appellant signed the bid document in ink - the dispute arises because the signature utilized by Appellant was in the form of a rubber stamp and not handwritten.

The language of the bid documents state that the bid "shall be signed in ink". "Signed" is not specifically defined.

Appellant asserts that Appellant clearly intended to be, and was, legally bound by its use of a stamp to sign in ink. Respondent asserts that the use of a stamp to sign the bid documents by Appellant left Respondent with justifiable doubts as to whether Appellant intended to be, and was in fact, legally bound to the bid submitted.

Neither position is unreasonable, yet one party must prevail.

Although I sympathize with Respondent's position, I agree with the findings and conclusions of the majority that Appellant should prevail in this appeal.

Respondent drafted the documents herein. Respondent drafted the phrase "Shall be signed in ink". Nowhere do the documents state that "signed in ink" means signed by hand (i.e., manually subscribed handwriting) in ink. Respondent must bear the burden of any ambiguity or vagueness in what that phrase means.

Appellant used ink to affix what it considered to be its legally binding signature to the bid documents - that is undisputed. Appellant used a stamp of Mr. Lawrence's signature, rather than Mr. Lawrence's handwritten signature. The corporate secretary verified the stamp of Mr. Lawrence's signature as genuine. Appellant had experience that SHA had, on at least one prior occasion, accepted the use of the stamp as legally binding in a bid situation.

Clearly, it was in no way unreasonable for Appellant to believe that the use of a stamp of Mr. Lawrence's signature, rather than a handwritten signature by Mr. Lawrence, was required by the bid documents.

Appellant signed the bid documents in ink using a stamp. There is no prohibition on the use of a stamp by potential bidders within the bid documents.

Should Respondent wish to limit signing to handwritten signatures, it should, in the future, clarify the phrase "signed in ink" by adding words such as "by manually subscribed handwriting" - for example - to the phrase "signed in ink" to its bid requests to clarify exactly what is expected and required of prospective bidders when it comes to signing bid documents for submission.

In this case, Appellant "signed in ink". Appellant's signature was verified by Appellant's corporate secretary. Appellant's signature complied with the requirements of the bid documents, is valid and binding legally, and, as a result, Appellant should prevail in this appeal.

Dated:

Michael W. Burns
Chairman

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 2549, appeal of Baltimore Pile Driving & Marine Construction, Inc. under SHA Contract No. AA3495174.

Dated:

Michael L. Carnahan
Deputy Clerk

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

In The Appeal of Baltimore Pile)
Driving & Marine Construction,)
Inc.)
) Docket No. MSBCA 2549
)
Under SHA Contract No.)
AA3495174)

ORDER

Upon consideration of the November 13, 2006 Motion to Reconsider filed by the State Highway Administration (SHA), and the November 17, 2006 Opposition thereto filed by appellant Baltimore Pile Driving & Marine Construction, Inc. (BPDI), and SHA's Reply filed November 20, 2006, and based upon the authority set forth therein, it is, by the Board, this 30th day of November, 2006,

ORDERED, that the following sentence be and hereby is stricken from page 14 of the Board's Order dated October 12, 2006: "This contract therefore must be awarded to BPDI."

Dated:

Dana Lee Dembrow
Board Member