

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

Docket No. 2555	Date of Decision: 12/19/06
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under Frostburg State Univ. FSU-07-014, Water Treatment Service Contract	
Appellant/Respondent: WATEC Company Frostburg State University	

Decision Summary:

Bid Renewal - Extension of Time to Correct Bid - The failure of the State to send bid renewal information to the correct address of a current service vendor does not justify an extension of time for the current vendor to correct its bid based upon mistaken interpretations of the scope of work required.

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specifically notified by telephone of the solicitation. Public notice of the bid was proper. No pre-bid conference was advertised or occurred for this procurement, and no pre-bid conference was required.

Though appellant is the current vendor for the subject services, information concerning this year's procurement was apparently directed to it at an old address, as a result of which appellant did not receive bid notice until the last minute but nonetheless was able to submit a timely offer. Appellant's bid was the second lowest of the three (3) firms that submitted bids, offering a charge of \$11,500, as compared to the low bid offer of \$8,975.20 submitted by an out-of-state firm, Chem Aqua Co., through its Maryland representative.

The day after bids were due appellant filed a timely protest letter, indicating in part that it had assumed incorrectly that FSU's Compton Building was included among the buildings serviced. The solicitation actually included thirty (30) other FSU physical plants, but not the Compton Building. FSU issued a letter of denial to appellant on or about July 21, 2006.

On July 31, 2006 the instant appeal was docketed before this Board. On or about August 23, 2006 the State submitted its Agency Report pursuant to the Code of Maryland Regulations (COMAR) §21.10.07.03. No further action or request was taken or made since that time and no hearing was requested. Apparently appellant's intent at this point is simply to include in the record for this procurement its protest on the basis of various objections, including propriety of bid notice, duration of contract award, scope of work requested, and bid preferences.

First, while FSU surely should have used the current correct address for appellant, there is nothing in the record to sustain a finding that FSU's bid notice was unlawful or contrary

to procurement requirements set forth by regulation or otherwise.

As to appellant's evident desire to be reconsidered in a year, that is certainly within the discretion of FSU's procurement officer and is specifically contemplated and allowed by the express provisions of the procurement here at issue.

It is unfortunate that appellant did not realize that the Compton Building was not included in this procurement, which may explain why its bid exceeded the low bid by the amount of \$2,524.80, or about 28%. However, the scope of work solicited by FSU was set forth by specific itemization in FSU's solicitation documents which cannot be dictated or modified by private vendors soliciting the work that FSU desires. The determination of scope of the work requested by FSU is wholly within the legitimate discretion of FSU. Even if there had been a basis for a vendor to contest that determination, such a challenge would have had to have been set forth in advance of bid submission in order to preserve the right to an appeal on that basis.

Appellant's confusion about the scope of work is understandable given the short time frame it had within which to submit its bid, but that does not imply that FSU's procurement officer breached any duty owed to appellant by law or regulation sufficient to warrant a finding by this Board that FSU's determination was arbitrary, capricious, unlawful or contrary to the weight of the evidence. FSU's procurement officer was obligated to recognize and honor the low bid.

Finally, with reference to appellant's apparent assertion of potential entitlement to bid preferences, this Board has no jurisdiction to entertain a bid dispute based upon allegations arising from a vendor's status as a minority business enterprise (MBE), though the Board notes that even if such jurisdiction

were present, it appears to be uncontested that appellant is not a certified MBE under the certification procedure of the Maryland Department of Transportation. (See COMAR §21.11.03.14 *et seq.*) And with respect to appellant's desire to be preferentially treated as compared to its out-of-state competitor, the only evidence before this Board is that because the low bidder is registered in the State of Texas, where no in-state bidding preference exists, FSU's procurement officer properly followed Maryland statute in not granting an in-state preference to appellant. *Annotated Code of Maryland, Finance and Procurement Article, §14-401.*

For all of these reasons, this appeal must be dismissed. The procurement record now fully reflects all of the issues for which appellant sought to note objection.

Wherefore, it is Ordered this \_\_\_\_\_ day of December, 2006 that the above-captioned appeal is dismissed with prejudice.

Dated:

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

I Concur:

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

\_\_\_\_\_  
Michael J. Collins  
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 2555, appeal of WATEC Company under Frostburg State Univ. FSU-07-014, Water Treatment Service Contract.

Dated:

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