

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of )  
Cosmos Air Purification )  
Environmental Systems, Inc. )  
 )  
 ) Docket No. MSBCA 2859  
Under Maryland Aviation )  
Administration IFB No. )  
R6028196 Purchase Order )  
No. MR6028196 )

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Robert J. Sager  
Assistant Attorney General  
Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This bid protest is denied due to appellant's failure to comply with procedural requirements governing the filing of bid protests, including the 10-day statute of limitations for noting an appeal.

Findings of Fact

1. On February 28, 2013, the Maryland Aviation Administration (MAA), a division of the Maryland Department of Transportation (MDOT) promulgated an Invitation for Bids (IFB) known as No. R6028196 for Purchase Order No. MR6028196, to secure various sizes of air filters used by MAA for its heating, ventilation and air conditioning (HVAC) systems at Baltimore/Washington International Thurgood Marshall Airport (BWI) and Martin State Airport (MTN).
2. On March 27, 2013 when bids were opened, the apparent low bidder was Air Filter Maintenance, Inc. (AFM) and the second lowest bid was submitted by appellant Cosmos Air Purification Environmental Systems, Inc. (Cosmos).

3. On April 5, 2013 Cosmos protested the award of the purchase order contract to AFM, arguing to MAA that the products offered by AFM did not meet IFB Specifications.
4. On June 11, 2013, the MAA Procurement Officer issued a final decision denying the bid protest submitted by Cosmos and sent that written decision to Cosmos by facsimile (fax) and by overnight delivery via United Parcel Service (UPS).
5. UPS delivery confirmation evidences receipt of MAA's final decision by Cosmos on June 12, 2013.
6. Notice of contract award was directed to AFM on June 25, 2013.
7. Cosmos filed an appeal of the MAA final decision to the Maryland State Board of Contract Appeals (Board), which received the Cosmos Appeal of Protest Denial on July 1, 2013 and assigned the appeal Docket No. 2859.
8. No attorney has entered an appearance on behalf of appellant in the instant proceeding.
9. On July 18, 2013, respondent MAA filed a Motion to Dismiss the instant appeal to which appellant Cosmos filed no opposition or other response.

### **Decision**

First, the Board notes that the instant appeal is filed by Cosmos without the benefit of professional legal counsel as required by the Code of Maryland Regulations (COMAR) 21.10.02.03. Because corporations are required by regulation to be represented by an attorney at law licensed in Maryland, on many prior occasions the Board has denied other appeals based merely upon the failure of an appellant to retain counsel. See Visions America Community Development Corporation, MSBCA 2701 (May 2010); Pipes and Wires Services, Inc., MSBCA 2709 (June 2010); and Delaware Elevator, Inc., MSBCA 2774 (September 2011); Mercy Family Care Center, MSBCA 2855 (August 2013). This defect alone justifies denial of the instant appeal.

The period for filing an appeal to the Board is established not only by Maryland regulation but also by statute. (COMAR 21.10.02.10(A) and Annotated Code of Maryland, State Finance and Procurement § 15-220(b)(1)). COMAR mandates that an appeal to the Board "shall be filed within 10 days of receipt of notice of the final procurement agency action." The source statute for the regulation uses nearly identical language, "An appeal...shall be filed...within 10 days after receipt of the notice of a final action." The Board has consistently upheld this strict statute of limitations, denying all appeals that are not timely filed regardless of mitigating circumstances. American Space Planner, Inc., MSBCA 1963, 5 MSBCA ¶400 (1996); Trinity Protection Services, Inc., MSBCA 2496, 6 MSBCA ¶568 (2005); S.A., Inc., MSBCA 2133, 5 MSBCA ¶433 (1999); National Science Corp., MSBCA 2083, 5 MSBCA ¶446 (1998); Pipes and Wires Services, Inc., MSBCA 2709 (2010).

It is undisputed that the MAA final determination to deny the Cosmos Bid Protest was received by appellant on June 12, 2013. Receipt of that letter dated June 11, 2013 triggered the running of the 10-day statute of limitations specified in law and regulation, allowing appellant only ten days from June 12, 2013 to note an appeal to the Board, or until June 22, 2013, which fell on a Saturday, thereby extending the deadline for noting its appeal to the next business day, Monday, June 24, 2013.

Although the appeal letter directed to the Board by Cosmos bears the date of June 17, 2013, it was not received by the Board until July 1, 2013. This is the operative date for determining whether an appeal is timely filed. The envelope in which its protest was enclosed bears a postmark of June 26, 2013, but both the mailing and receipt of the Cosmos appeal occurred after the passing of the June 24, 2013 deadline for noting an appeal. Because this appeal was not filed until after the expiration of the statute of limitations, the board is compelled by law and regulation to enter a dismissal.

The Board notes finally that appellant filed no opposition to the State's Motion to Dismiss nor otherwise contested any issue of fact or law.

Wherefore it is Ordered this \_\_\_\_\_ day of August, 2013 that this appeal be and hereby is DENIED.

Dated:

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

I Concur:

\_\_\_\_\_  
Michael J. Collins  
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 2859, appeal of Cosmos Air Purification Environmental Systems, Inc., Under Maryland Aviation Administration IFB No. R6028196 Purchase Order No. MR6028196.

Dated:

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