

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

In The Appeal of)
Delaware Elevator)
)
) Docket MSBCA Nos. 2774
)
Under)
DGS IFB No. 001IT818419)

APPEARANCE FOR APPELLANT: None

**APPEARANCE FOR RESPONDENT: Turhan E. Robinson
Assistant Attorney General
Baltimore, Maryland**

MEMORANDUM ORDER AND OPINION BY BOARD MEMBER DEMBROW

This bid protest is before the Maryland State Board of Contract Appeals (Board) for ruling on the State's Motion for Summary Disposition, or in the Alternative, to Dismiss, filed on the grounds that appellant did not submit a bid in response to the State's solicitation, that the appeal is not timely filed, and that the appeal is deficient as a matter of law due to appellant's failure to be represented by counsel. The Board grants the State's Motion on all three (3) grounds.

The Department of General Services (DGS) posted on eMaryland Marketplace on April 5, 2011 a certain Invitation for Bids (IFB) known as IFB No. 011IT818419 to provide office building elevator maintenance services at two (2) locations in downtown Baltimore. Bids were due on May 10, 2011 and responses to the solicitation were opened that date. They included five (5) bids ranging in amounts from \$287,355 to \$416,206. No bid was received by DGS from appellant Delaware Elevator, Inc. (Delaware Elevator), though it

intended to submit a bid of \$246,093.

On May 18, 2011 in response to the DGS Procurement Officer's notification to appellant that it failed to submit any bid, Delaware Elevator informed DGS that it believed it had submitted its bid in timely fashion on May 9, 2011. DGS investigated that allegation through its consulting contractor, Deloitte Consulting, LLP, which determined through computer forensics that Delaware Elevator did utilize eMaryland Marketplace to submit a bid on the subject contract, and saved changes in its drafts of responsive proposals 14 times, but appellant never actually transmitted to DGS its final formal bid. DGS therefore denied appellant's protest on June 14, 2011 and on June 28, 2011 Delaware Elevator filed its appeal to the Board without appearance of counsel.

Maryland statute provides a strict 10-day limitation on the right to note an appeal before the Board. Annotated Code of Maryland, State Finance & Procurement Article (SFP) § 15-220(b)(1). That law is also memorialized by regulation, namely, § 21.10.02.10(A) of the Code of Maryland Regulations (COMAR), which expressly prohibits the Board from considering any appeal which is not filed in timely fashion, as is the case here.

It is undisputed that on June 14, 2011, appellant received and signed for the DGS final determination denying its bid protest. That notice commenced the running of the 10-day limitation on appellate recourse to the Board, which expired June 24, 2011; but Delaware Elevator did not note its appeal to the Board until its correspondence dated June 26, 2011, which was actually received by the Board on June 28, 2011. The foregoing time frame is uncontested by appellant and indeed, appellant fails also to note any Opposition whatsoever to the State's July 25, 2011 Motion for Summary Disposition or to Dismiss, for which a response was due within 15 business days, or by August 15, 2011. (See COMAR 21.10.05.06 (B)(4).)

To re-cap appellant's shortfalls in this matter, Delaware Elevator failed to submit a bid prior to the bid submission closing

date of May 10, 2011. It failed to note its administrative protest to DGS until May 18, 2011, one (1) day after the seven (7) day limitations period for doing so. (See COMAR 21.10.02.03(C).) Thereafter it noted an appeal to the Board, which was received four (4) days after that limitations period expired.

Furthermore, appellants are mandated by COMAR 21.10.05.03(A) to secure representation by counsel as a condition of pursuing an appeal. But no attorney has entered an appearance on behalf of Delaware Elevator. This may serve to explain appellant's failure to file any Opposition to the State's Motion for Summary Disposition or in the Alternative, to Dismiss, but it does not excuse this final shortcoming in appellant's actions to secure a State contract under the subject work solicitation. It would have been plainly inappropriate and unlawful for DGS to consider a bid that was not properly submitted in timely fashion, and the Board concludes therefore that DGS acted lawfully and responsibly in refusing to recommend contract award to Delaware Elevator under the undisputed circumstances present here. For all of these reasons, this appeal must be dismissed.

Wherefore it is Ordered this ____ day of September, 2011 that the above-captioned appeal be and hereby is DISMISSED.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael J. Collins
Chairman

Ann Marie Doory
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 2774, appeal of Delaware Elevator under DGS Solicitation No. 001IT818419.

Dated:

Michael L. Carnahan
Deputy Clerk