



3. Mercy's proposal was deemed susceptible of being selected for award but Mercy received no referrals because DHR was able to fill all of its RCC needs using other offerors ranked higher than Mercy.
4. Soon after its debriefing by DHR on April 25, 2013, Mercy directed a Notice of Protest to DHR alleging in part that DHR relied upon incorrect information during the evaluation process and also that the solicitation process was unfair.
5. The Notice of Protest filed by Mercy on April 29, 2013 was not filed under the correct section of the Code of Maryland Regulations (COMAR) and was not sent by Mercy to the Procurement Officer as required by the RFP, although it was transmitted by DHR to the procurement officer after receipt by the Deputy Chief Financial Officer of DHR.
6. On May 17, 2013, DHR issued a final determination denying the Protest filed by Mercy on the basis of several defects, including that the Protest was not sent to the Procurement Officer, that it was said to be filed pursuant to the wrong section of COMAR, that some of the issues stated in the Protest were required to be raised prior to bid opening date, and that Mercy's claimed defects arising from alleged DHR confusion between Mercy's Baltimore City location and its Southern Maryland location were corrected by DHR prior to proposal evaluation.
7. On May 28, 2013, Mercy filed a *pro se* Notice of Appeal to the Maryland State Board of Contract Appeals (Board) which was docketed as MSBCA 2855.
8. Mercy was advised that it was required by COMAR 21.10.07.02B to be represented by an attorney at law licensed in Maryland, but no such counsel has entered an appearance in this appeal on behalf of Mercy.
9. On June 28, 2013, DHR filed a Motion to Dismiss the instant appeal and Mercy filed no opposition or other response.

### Decision

First, the Board notes that the instant appeal is filed by Mercy without the benefit of professional legal counsel as required by COMAR 21.10.05.03. On multiple prior occasions the Board has denied other appeals based upon this deficiency. 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 was specifically informed by the Board of the need to be represented by legal counsel as required of all other corporations appealing a decision to the Board, but Mercy elected to ignore that obligation.

Had Mercy retained counsel as mandated, its initial filing with this Board might have contained a statement of the grounds of its appeal, but instead, the Notice of Appeal itself is legally insufficient. See COMAR 21.10.07.02C. Mercy's failure to include in its Notice of Appeal any grounds of the appeal renders the Notice inadequate as a matter of law and constitutes a second basis of the Board's denial of the instant appeal.

The Board notes furthermore that Mercy's initial protest to DHR was said to have been entered pursuant to COMAR 14.13.01.16, which has no application to the DHR RFP here at issue. Jurisdiction of the Board is limited to those issues raised first before the state agency promulgating a given solicitation. DHR correctly determined that the legal basis of Mercy's initial protest was misplaced because it was not pursued under the correct section of COMAR and was not transmitted by Mercy to the DHR procurement officer. The Board will not disturb those conclusions rendered by DHR.

Finally, the Board observes that Mercy made no objection or other opposition to the State's June 28, 2013 Motion to Dismiss the Appeal. The time for filing its opposition having expired, the Board also denies this appeal because the Motion to Dismiss is uncontested by appellant.

For all of the foregoing reasons, this appeal must be denied.  
The Motion to Dismiss filed by DHR is hereby granted.

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 2810, appeal of Mercy Family Care Center, Inc., Under Department of Human Resources RFP No. SSA/RCC-13-001-S.

Dated:

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