

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

In The Appeal of)
NewMarket Enterprises Limited)
) Docket No. MSBCA 2718
Under)
Department of General Services)
ITB 001IT818053)
)

APPEARANCE FOR PETITIONER: None

**APPEARANCE FOR RESPONDENT: Christopher R. Ryon
Assistant Attorney General
Baltimore, Maryland**

OPINION BY BOARD MEMBER DEMBROW

This appeal must be dismissed because appellant did not seek relief from the Maryland State Board of Contract Appeals (Board) within ten (10) days of notice of final agency action.

Findings of Fact

1. On or about April 1, 2010, the Department of General Services (DGS) issued an Invitation for Bids (IFB) for a firm, fixed price contract relating to statewide provision of office paper shredders and associated supplies and for which bids were due by April 21, 2010.
2. The subject solicitation, known as DGS Contract No. ITB 001IT818053, was advertised on eMaryland Marketplace (eMM), a statutorily created publicly accessible website listing bid opportunities offered by the State, and was also included on the DGS website as well as on hard copies posted on DGS bid boards at the State Office Complex locations at

201 West Preston Street, 300 West Preston Street, and 301 West Preston Street, Baltimore, Maryland 21201.

3. DGS also affirmatively transmitted the solicitation to vendors that had registered with eMM under commodity code 70071, the DGS code used for firms interested in paper and film shredders, but not to those firms that had registered with eMM only under commodity code 60082, the DGS code used for firms interested in paper shredders.
4. As of the date of the bid opening on April 21, 2010, ten (10) bids had been submitted to DGS in response to the solicitation, including one from interested party Adams Marketing Association, Inc. (Adams), which provided the lowest total responsive bid, and a contract was therefore awarded to Adams on April 29, 2010.
5. No bid was submitted in 2010 by appellant NewMarket Enterprises Ltd. (NewMarket), though NewMarket had been a party to the previous shredder contract with the State in place since 2008.
6. On April 26, 2010, as the result of an inquiry of DGS sent by NewMarket by e-mail, NewMarket received actual notice that it had missed the April 21, 2010 deadline for submitting bids for the subject contract for which it was the incumbent provider.
7. On April 30, 2010, DGS received a bid protest from NewMarket based on the allegation that the procurement was defective because DGS had used the wrong commodity code in the solicitation advertised on eMM, and that error caused NewMarket not to be aware of the 2010 solicitation.
8. NewMarket's April 30, 2010 protest was denied by the DGS procurement officer by letter dated May 21, 2010 which was mailed by DGS by certified mail to the address provided by NewMarket on the letterhead by which its bid protest had been noted, but that certified mail was returned by the post

office to DGS on May 25, 2010 marked "insufficient address" as the result of which DGS re-sent the denial by e-mail on May 25, 2010 and NewMarket acknowledged receipt of that notice of final decision the same date.

9. On June 7, 2010, NewMarket filed the instant appeal with the Maryland State Board of Contract Appeals (Board) by letter which was dated June 3, 2010 but not received by the Board until June 7, 2010.
10. On June 29, 2010, DGS, through counsel, filed its Agency Report, to which NewMarket noted no comment or other reply nor is there any evidence that NewMarket retained professional legal counsel nor did any party request a hearing.

Decision

First, the Board notes that NewMarket failed to retain counsel as required by the Code of Maryland Regulations (COMAR) §21.10.05.03, and as appellant was specifically informed by the Board in its initial acknowledgement to NewMarket of the Board's receipt, acceptance, and filing of this appeal on June 7, 2010. A growing number of recent Board decisions have sought to remind prospective appellants of this obligation by dismissing corporate appeals without the benefit of professional legal counsel. Affiliated Computer Services, Inc. v. University of Maryland Baltimore, MSBCA 2717, _____ MSBCA ¶_____; Pipes & Wires Service, Inc. v. MAA, MSBCA 2709, _____ MSBCA ¶____ (2010); Mumsey's Residential Care, Inc. v. DHR, MSBCA 2702, _____ MSBCA ¶____ (2010); Okojie Group, Inc. v. DHR, MSBCA 2700, _____ MSBCA ¶____ (2010); Visions America Community Development Corp. v. DHR, MSBCA 2701, _____ MSBCA ¶____ (2010). Ironically, only business entities with the enormous benefit of having an attorney appear to recognize this obligation, despite the final sentence of the Board's standard letter to appellants

acknowledging commencement of an appeal, which states: "Corporations, partnerships and joint ventures shall be represented by an attorney at law licensed in Maryland." (Emphasis provided.) The identical language appears in COMAR and appeared in the letter sent by the Board to NewMarket on June 8, 2010.

Turning to the second and equally if not more egregious procedural defect in this appeal, NewMarket concedes that it received actual notice of the final agency action in this matter on May 25, 2010. That commenced the running of the strict ten (10) day limitation for noting an appeal to the Board as set forth in COMAR 21.10.02.10, according to which any appeal that is not filed with the Board "within 10 [calendar] days of receipt of notice of the final procurement agency action" "may not be considered." NewMarket had only ten (10) days from May 25, 2010 to note its appeal. Its appeal was due therefore on or before June 4, 2010, but NewMarket did not actually file its appeal until June 7, 2010. Thus, in accordance with COMAR, this appeal may not be considered because it was not filed in timely fashion.

Wherefore it is Ordered this _____ day of August, 2010 that the above-captioned appeal 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 2718, appeal of NewMarket Enterprises, Ltd. under DGS ITB 001IT818053.

Dated:

Michael L. Carnahan
Deputy Clerk