

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

In The Appeal of)
The Okojie Group, Inc.)
)
)
Under)
DHR RFP SSA/RCC-11-001-S)
)

APPEARANCE FOR APPELLANT: **None**

APPEARANCE FOR RESPONDENT: **Aretha Ector**
 Assistant Attorney General
 Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

 This Appeal of a determination by Respondent Maryland Department of Human Resources (DHR) that appellant The Okojie Group, Inc. (Okojie) is ineligible to be considered for inclusion on DHR’s list of child care residential services providers must be dismissed on multiple grounds, including that Appellant failed to obtain representation by legal counsel, failed to respond to DHR’s Motion to Dismiss, failed to file its Complaint before the Maryland State Board of Contract Appeals (Board) in timely fashion, and failed to submit its proposal to DHR in timely fashion. As a result, this Board is without jurisdiction to entertain the instant appeal, which therefore must be dismissed with prejudice.

FINDINGS OF FACT

1. On November 6, 2009, DHR issued a certain Request for Proposals (RFP) to solicit and identify qualified

providers of child care services used and relied upon by DHR's Social Services Administration (SSA) in administering its foster care program.

2. The deadline for submission of technical proposals was established as 4:00 p.m. on January 19, 2010, and this was well understood by prospective offerors, including Okojie, who were notified of the said deadline by Section 1.5 of the RFP, which also stated in bold print that **"Proposals or unsolicited amendments to Proposals arriving after the closing time and date will not be considered."**
3. It is not disputed that appellant The Okojie Group, Inc. failed to submit its proposal on or before the 4:00 p.m. deadline on January 19, 2010.
4. DHR refused to allow Okojie to submit a late proposal for its consideration, a decision which Okojie protested by correspondence dated January 21, 2010, which offered as Okojie's excuse for failure of timely submission that the person who attempted to deliver the Okojie proposal, namely, Hudson Egbaqiri, attempted to deliver the proposal to DHR on time but was hospitalized for chest pain that day at St. Agnes Hospital.
5. By correspondence dated February 26, 2010, DHR's Procurement Officer notified Okojie that because its proposal had not been submitted in timely fashion as required, it could not and would not be considered.
6. The aforesaid notification from DHR dated February 26, 2010 was received by Okojie on February 27, 2010 as evidenced by a return receipt for certified mail and included notice to Okojie that any appeal to this Board from that final determination by the DHR procurement officer had to be filed within ten (10) days from the

date of receipt of that notification, enabling Okojie to contest DHR's rejection of its proposal by appealing to this Board by March 9, 2010.

7. By correspondence dated March 8, mailed March 11 and received March 12, 2010, Okojie filed the instant appeal with the Board which was docketed as MSBCA No. 2700.
8. No attorney has entered an appearance in this appeal on behalf of Okojie.
9. On April 9, 2010, DHR filed a Motion to Dismiss the instant appeal, to which Okojie filed no Opposition or other response.

Decision

This is not a difficult decision for the Board because State law and regulation compels dismissal of Okojie's appeal on multiple elementary grounds.

First, the Department's Motion to Dismiss must be granted because Okojie did not file its appeal to the Board in timely fashion. The Board is simply without jurisdiction over protests which are not timely filed. As plainly stated in the Code of Maryland Regulations (COMAR) at § 21.10.02.10(A):

"appeal by an interested party to the Appeals Board shall be filed within 10 days of receipt of notice of the final procurement agency action."

Furthermore, the immediately subsequent section of COMAR provides express direction to the Board on this point in providing as follows:

"An appeal received by the Appeals Board after the time prescribed in §A of this regulation may not be considered.."

The foregoing requirement for preserving appellate rights is not a mere suggestion; it is a requirement. Indeed, it is a requirement not only established by regulation but also by

statute. See §15-220(b) (1) of the State Finance and Procurement Article of the Maryland Annotated Code.

It is undisputed that Okojie received the February 26, 2010 final determination of DHR's procurement officer on February 27, 2010. Certified mail from DHR to Okojie bearing the signature of Hudson Egbagiri on behalf of Okojie is an undisputed part of the record of this proceeding appearing as an attachment to Exhibit D of the Agency Report. Okojie's appeal was not filed until March 12, 2010 even though it was due by March 9, 2010. That Okojie dated its March 11, 2010 mailing to the Board bearing the date of March 8, 2010 is irrelevant. Okojie's appeal is not timely filed and therefore must be dismissed in accordance state statute and regulation for which Okojie proffers no basis at all for exception.

The Board notes also that even if this appeal had been timely filed, it would still be incumbent upon the Board to dismiss it. It is unfortunate that Mr. Egbagiri had chest pains on January 19, 2010, the due date for submission of proposals for DHR residential services, and was admitted to a hospital that day as a result. But that does not excuse the admitted failure of Okojie to submit its proposal on time as required. In accordance with COMAR 21.05.02.10(B), the only permitted basis of authority for a state agency to receive a response to an RFP after the due date is in the event that the lateness of receipt is caused by an action or omission on the part of the State. No allegation of fault on the part of DHR is raised by Okojie in its request for this Board to require DHR to receive and consider its proposal. And even if the available grounds were broader for allowing DHR discretion to accept proposals which are untimely (and such an extension would be prejudicial to other proposers complying with DHR and COMAR requirements), no reason is put forward by Okojie as to

why appellant waited until the afternoon of the due date to submit its proposal nor why someone else might have delivered its proposal to DHR when Mr. Egbagiri became unavailable that day for that purpose.

Furthermore, this appeal must be dismissed because Okojie is not represented by properly qualified counsel. According to its letterhead, Okojie is a corporation. COMAR 21.10.05.03(A) states specifically:

“Corporations, partnerships, and joints ventures shall be represented by an attorney at law licensed in Maryland.”

The Board's March 12, 2010 correspondence to Okojie acknowledging receipt of its appeal concluded with actual notice to Okojie of its obligation to retain counsel, but like the other requirements for having, noting, and pursuing an appeal, Okojie apparently simply ignored this obligation as well.

The State relies upon the resources and actions of private vendors for a huge array of vital public services, but only those vendors that are sufficiently competent to comply with procurement requirements are sought or eligible for contract award. To consider those proposers who repeatedly fail to comply with legal requirements to stand on the same footing as those that do would be unfair and unwise. In this case, Okojie did not file an appeal in timely fashion. Ironically, even had its appeal been filed on time, its underlying proposal for services was also untimely. Had Okojie sought rudimentary advice from competent counsel, it would have been fully informed of the consequences of its multiple failures in advance of the instant decision, and in all likelihood it would not have pursued this appeal, recognizing that it must be dismissed.

Wherefore, it is Ordered this day of May, 2010, that
the appeal of The Okojie Group, Inc. is hereby 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 2700, appeal of The Okojie Group, Inc. under DHR RFP SSA/RCC-11-001-S.

Dated:

Michael L. Carnahan
Deputy Clerk