

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

In the Appeal of)
Pipes and Wires Services, Inc.)
)
) Docket No. MSBCA 2709
)
)
Under)
MAA Contract MAA-CO-10-004)

APPEARANCE FOR APPELLANT: None

**APPEARANCE FOR RESPONDENT: David P. Chaisson
Assistant Attorney General
Baltimore, Maryland**

OPINION BY CHAIRMAN BURNS

Appellant Pipes and Wires Services, Inc. has appealed the denial of its bid protest regarding the award of a contract for sewer pipe replacement. For a host of reasons, Appellant's appeal to the Board must be dismissed.

FINDINGS OF FACT

1. Respondent Maryland Aviation Administration ("MAA") issued an Invitation for Bids ("IFB") for Contract MAA-CO-10-004-Sanitary Pipe Replacement at Baggage Claim number 10.

2. The solicitation was advertised on eMaryland Marketplace and a pre-bid meeting was conducted on January 15, 2010.
3. The original date of bid opening was scheduled for February 10, 2010. Due to the expectation of blizzard-conditions on or about February 10, 2010, the bid closing date was extended by one week to February 17, 2010.
4. The IFB advised all potential bidders that the use of the services of United Parcel Service ("UPS"), the United States Mail, or other similar delivery services might delay delivery of communications and stated that "Hand or Commercial Delivery is recommended." (IFB Section G-I-1.02).
5. Appellant Pipes and Wires Services, Inc. ("PWS") did not attend the pre-bid meeting in January, nor did it submit a bid before the extended closing date of February 17, 2010.
6. After public bid opening on February 17, 2010, PWS send the MAA a letter of protest dated February 22, 2010. In that protest, PWS requested that all bids received be "deemed null and void" and that another IFB be issued for the project.
7. On April 7, 2010, the MAA Procurement Officer issued a final agency decision denying PWS's protest, which was sent to PWS by way of UPS Overnight delivery.
8. The Procurement Officer's decision contained a notice of appeal rights and advised PWS that a notice of appeal had to be filed within ten (10) days from the date the decision was received by PWS.
9. The UPS delivery confirmation indicates that the decision was delivered to PWS on April 8, 2010.

10. PWS sent a letter to the Maryland State Board of Contract Appeals ("Board") appealing the denial of its protest.
11. PWS's appeal letter is dated April 16, 2010. The appeal was received by the Board on April 19, 2010.
12. On April 29, 2010, Respondent filed a Motion to Dismiss PWS's appeal, citing several grounds for dismissal.
13. PWS has filed no response to Respondent's Motion.
14. As of the date of this decision, PWS is not represented by counsel.
15. Neither party has requested a hearing on the Respondent's Motion to Dismiss which will, therefore, be decided on the record herein.

DECISION

Pipes and Wires Services, Inc.'s Appeal must be dismissed. There are several grounds for this result.

First, PWS failed to file a timely notice of appeal in this matter. COMAR 21.10.02.10A. requires that an appeal to the Board shall be filed within 10 days of receipt of notice of the final procurement agency action. The Procurement Officer final decision was received by PWS on April 8, 2010. PWS filed the instant appeal with the Board on April 19, 2010, which was eleven days after receipt of the Procurement Officer's decision by PWS.

PWS's appeal to this Board is untimely and must, therefore, be dismissed.

In addition, other grounds would require the granting of the Motion to Dismiss, even if PWS's appeal had been

timely filed. COMAR 21.10.07.02 lists several requirements for inclusion within a notice of appeal. Among those requirements are: a statement of the grounds for the appeal; specification for the ruling requested from the Board; and, the attachment to the notice of appeal of a copy of the final agency action from which the appeal is being taken and any supporting exhibits relied upon by the appellant.

PWS's appeal omits all of these required elements from its appeal notice. These elements are not suggestions; they are items specifically required by COMAR in order to file a notice of appeal with the Board. The requirements of COMAR 21.10.07.02.C. and D. are clear, simple and not particularly onerous. A party seeking relief from this Board must fulfill certain minimal requirements when filing a notice of appeal, including complying with COMAR 21.10.07C. and D. PWS has failed to comply with these minimal requirements and its appeal must, therefore, be dismissed.

Finally, PWS is, to all appearances, a corporation. COMAR 21.10.05.03 A. states an individual may appear before the Board in person or may be represented by an attorney at law licensed in Maryland, but: "Corporations, partnerships, and joints ventures shall be represented by an attorney at law licensed in Maryland." PWS has no such representation in this Appeal.

PWS was specifically notified of this regulatory requirement for representation by the Board by way of a letter from the Board dated April 21, 2010. Clearly, PWS had actual, as well as constructive, knowledge of this COMAR requirement for corporate representation by counsel.

PWS cannot maintain the prosecution of this action without representation by an attorney at law licensed in Maryland. No attorney represents PWS in this Appeal. Over two months has passed since the filing of this Appeal by PWS - ample time for PWS to have complied with the requirements of COMAR 21.10.05.03 A.

The provisions of COMAR 21.10.05.03 are not suggestions, tips or hints; they are legal requirements. These requirements cannot simply be ignored by this Board.

PWS failure to comply with the requirements of COMAR 21.10.05.03 A., in spite of a specific notification from this Board to do so, must result in the dismissal of this Appeal or COMAR 21.10.05.03 A. is rendered meaningless.

For all of the reasons cited above, PWS's Appeal must be dismissed.

In The Appeal of)
Pipes and Wires Services, Inc.)
)
) Docket No. MSBCA 2709
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Under)
MAA Contract MAA-CO-10-004)

ORDER

Wherefore, it is Ordered this day of June, 2010
that the appeal of Pipes and Wires Services, Inc. in Docket
No. MSBCA 2709 the above-captioned matter is dismissed with
prejudice.

Dated:

Michael W. Burns
Chairman

I Concur:

Michael J. Collins
Board Member

Dana Lee Dembrow
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 2709, appeal of Pipes and Wires Services, Inc. under MAA Contract MAA-CO-10-004.

Dated:

Michael L. Carnahan
Deputy Clerk