



total contract price to \$122,101.50) and was awarded the contract.

3. Notice to proceed was issued on March 7, 2007.
4. During the course of the project, a dispute arose between PWS and SHA regarding the costs of certain work.
5. On July 30, 2007, PWS stopped work on the project and refused to continue work unless it received payment from SHA in the amount PWS claimed it was owed.
6. On August 8, 2007, SHA directed PWS to return to the project site and proceed with the work in accordance with the Contract as required by contract provision GP-8.03 Prosecution of the Work.
7. By way of a letter dated September 4, 2007, SHA directed PWS to return to work by September 10, 2007. In this letter, SHA warned PWS that failure by PWS to return to work as directed by SHA would constitute a breach of the contract and, pursuant to provision GP-8.03 of the contract, SHA would terminate the contract for default and seek damages for delay and cost to complete the remaining work.
8. PWS did not and has not returned to the project.
9. PWS was terminated by SHA.
10. After PWS abandoned the project and was terminated by SHA, SHA incurred a total of \$52,820.00 for costs to complete work and for liquidated damages due to the late completion of the project.
11. On or about December 16, 2008, PWS's attorney sent SHA a letter claiming that PWS was owed an additional \$41,023.63 for work on the project.

12. SHA's District Engineer, Mr. David Coyne, denied PWS's claims on December 23, 2008.
13. On October 19, 2009, the SHA Procurement Officer issued a final decision finding that PWS had been terminated for default based upon its work stoppage and non-performance. The Procurement Officer also found that SHA had incurred a total of \$52,820.00 in costs to complete contract work and for liquidated damages associated with the late completion of the project.
14. The Procurement Officer's final decision contained a notice of appeal rights as required by COMAR 21.10.08C.(5), advising PWS that a notice of appeal had to be filed within thirty (30) days from the date the decision was received by PWS.
15. The certified U.S. mail delivery receipt indicates that PWS's President, Mr. Michael O'Melia, signed for receipt of the Procurement Officer's Decision on October 28, 2009.
16. Subsequently, PWS delivered a three sentence letter to the Maryland State Board of Contract Appeals ("Board") stating that it was appealing the "Contracting Officer's decision to terminate the Referenced contract for default" and advised that PWS would "forward supporting documentation in the near future."
17. PWS's letter to the Board is dated November 25, 2009 (the Wednesday before Thanksgiving).
18. The letter of PWS was received and was date-stamped as having been received by the Board on December 3, 2009.

19. The letter dated November 25, 2009, was legally insufficient in that it failed to include information required under Maryland regulations (COMAR).
20. A copy of the PWS's notice of appeal was not received by the Procurement Officer and there is no indication on PWS's letter noting an appeal that a copy was sent to the Procurement Officer.
21. As of today's date, no Complaint has been filed by PWS nor has an attorney entered an appearance on behalf of PWS.
22. On January 8, 2010, Respondent SHA ("Respondent") filed a Motion to Dismiss PWS's appeal.
23. According to Respondent's Motion and cover letter thereto, a copy of Respondent's Motion to Dismiss was mailed to Mr. O'Melia at PWS.
24. No response has been received by the Board from PWS to Respondent's Motion.
25. Neither party has requested a hearing on this Motion which will, therefore, be decided on the record herein.

### **Decision**

COMAR 21.10.06.05 provides that a "motion addressed to the jurisdiction of the Appeals Board" may be filed by a party or that the Board may, upon its own motion, raise the issue of jurisdiction "at any time".

State Finance and Procurement Article §15-220(b) (2) and COMAR 21.10.04.09A. require that an appeal to the Board must be filed within thirty (30) days of receipt of a final action (State Finance and Procurement)/decision (COMAR) by an appellant.

In this case, the Procurement Officer's Final decision was received by PWS's President on October 28, 2009. To be considered timely, PWS's appeal had to be filed with the Board within 30 days of that date, which was November 27, 2009. November 27, 2009 was a Friday and a legal holiday for the State of Maryland and the Board, along with the rest of Maryland State Government, was closed on that date. The Board reopened on November 30, 2009, and Appellant's appeal was due by that date.

Appellant's appeal letter was not received by the Board until December 3, 2009. Appellant's appeal was, therefore, received by the Board after the period mandated by statute and regulation for receipt by the Board.

As explained in COMAR 21.10.04.09D.:

An appeal received by the Appeals Board after the time prescribed in §A or B of this regulation may not be considered unless it was sent by registered or certified mail not later than the fifth day before the final date for filing an appeal as specified in §A or B of this regulation. A date affixed by postage meter will not be considered as evidence of the actual mailing date. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service.

Appellant did not file this appeal by registered or certified mail. The appeal was received by the Board on December 3, 2009. By law and regulation, the appeal was due by November 30, 2009.

The appeal was, therefore, untimely filed and this Board is without jurisdiction to consider it.

Appellant's appeal also fails to comply with other regulatory requirements as well. The Board will not go into these matters, however, since the above-noted regarding timeliness is dispositive of this matter.

For the reasons indicated, Respondent's Motion to Dismiss must be granted by the Board and appellant's appeal must be dismissed.

Wherefore, it is Ordered this            day of February, 2010 that the appeal of Pipes and Wires Services, Inc. in 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 2684, appeal of Pipes and Wires Services, Inc. under SHA Contract No. CL3515129R.

Dated:

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Michael L. Carnahan  
Deputy Clerk