

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

In The Appeal of )  
Scheibel Construction Company )  
 )  
 ) Docket No. MSBCA 2698  
Under )  
College of Southern Maryland )  
Contract No. CSM08-008 )

**APPEARANCE FOR APPELLANT:** M. Joseph Pierce, Esq.  
Kasimer & Annino, P.C.  
Falls Church, Virginia

**APPEARANCE FOR RESPONDENT:** Ian I Friedman, Esq.  
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Baltimore, Maryland

**OPINION BY BOARD MEMBER DOORY**

The Respondent's Motion to Dismiss is granted because the Board of Contract Appeals does not have jurisdiction over this appeal.

**Findings of Fact**

1. On September 30, 2008 a contract for the construction of a Wellness Center for the College of Southern Maryland in Leonardtown, Maryland was made by and between the College of Southern Maryland (Community College) and Scheibel Construction Company, Inc. (Contractor). A contract dispute over certain specifications arose when the contractor sought to recover additional costs.

2. The contractor, Scheibel Construction Company filed a complaint with the Maryland State Board of Contract Appeals on March 1, 2010.

### Decision

The State Finance and Procurement Article of the Annotated Code of Maryland states in Section 15-211:

- (a) Jurisdiction - The Appeals Board shall have jurisdiction to hear and decide all appeals arising from the final action of a unit:
  - (1) on a protest relating to the formation of a procurement contract; or
  - (2) except for a contract claim relating to a lease for real property, on a contract claim by a contractor or a unit concerning:
    - (i) breach;
    - (ii) performance;
    - (iii) modification or
    - (iv) termination.

The language "arising from the action of a unit" is dispositive in this matter. The State Finance and Procurement Article defines a unit in Section 11-101:

- (x) Unit. - (1) "Unit" means an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.
- (2) Unit does not include:
  - (i) a bistate, multistate, bicounty or multicounty government agency; or
  - (ii) a special tax district, sanitary district, drainage district, soil conservation district, water supply district, or other political subdivision of the State.

This community college is a multicounty government agency. The College of Southern Maryland is a community college that services and is supported financially by three counties: St. Mary's, Charles and Calvert. Community colleges are governed by the Education Article and have a separate procurement process. A

community college is not a "unit" of State government for purposes of the General Procurement law.

The Court of Appeals in Chesapeake Charter, Inc. v. Anne Arundel County Board of Education 358 Md 129, 747 A2nd 625 (2000) held that local school boards are not units, stating:

"We find no basis, upon this analysis to conclude that the Legislature ever intended to subject procurements by a county school board to the General Procurement Law. It is inconceivable that the General Assembly would have made such a dramatic shift in policy without some clearer indication of its intent to do so. We hold, therefore, that a county school board is not a "unit" within the meaning of that law, and, accordingly, that the Board has no jurisdiction over disputes arising from procurement decisions made by those boards." Id. At 145,146.

Further, the Attorney General Opinion No. 92 Opinion Att'y Gen. 154 is very persuasive in its analysis of the similarities between community colleges and county boards of education and its ultimate conclusion in that Opinion that community colleges are not units of State government under the General Procurement law.

In the procurement regulations, COMAR 21.01.02.01 (84)(a) states:

"State agency" means any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundation, fund, department, institute, public corporation, service, trust, university, or other unit of the Executive Branch of the State government and includes any subunit within any of these units.

Consistent with statute, COMAR 21.01.02.01 (84)(b) also states:

"State agency" does not mean or include bicounty, or multicounty, government agencies or political subdivisions of the State, including counties, municipalities, special

tax districts, sanitary districts, drainage districts, soil conservation district, water supply districts, and any entity organized under the general corporation laws of the State.

It is argued that the procurement regulations, specifically COMAR 21.01.02.01 (84), define what a State agency means and includes the word college. However, this community college is not a unit of the Executive Branch and is considered for purposes of procurement regulations as a multicounty agency.

Thus, the Board grants the motion to dismiss because the Board lacks jurisdiction.

Wherefore it is Ordered this \_\_\_\_\_ day of October, 2010 that the above-captioned appeal is DISMISSED WITH PREJUDICE.

Dated:

\_\_\_\_\_  
Ann Marie Doory  
Board Member

I Concur:

\_\_\_\_\_  
Michael J. Collins  
Chairman

\_\_\_\_\_  
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 2698, appeal of Scheibel Construction Company under College of Southern Maryland Contract No. CSM 08-008.

Dated:

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