

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of)
Sovereign Consulting, Inc.)
)
) Docket No. MSBCA 2857
Under SHA)
Contract No. TA4005249)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Ian R. Fallon
Assistant Attorney General
Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This contract dispute is deficient on procedural grounds including failure to retain counsel and failure to respond to the State's Motion to Dismiss, as a result of which the appeal is denied.

Findings of Fact

1. Appellant Sovereign Consulting, Inc. (Sovereign) was the sole bidder in a certain procurement identified by the State Highway Administration (SHA) as Contract No. TA4005249, by which SHA sought to obtain services associated with the remediation of trichloroethylene (TCE) at an SHA facility in Talbot County, Maryland.
2. On November 27, 2012, appellant notified SHA that it would be filing a claim for equitable adjustment based on its allegation of a differing site condition at the subject job.
3. On May 23, 2013, SHA denied appellant's request for equitable adjustment.
4. On June 28, 2013, Sovereign filed the instant appeal with the Maryland State Board of Contract Appeals (Board), seeking additional payment from SHA in the amount of \$103,276.

5. SHA filed a Motion to Dismiss on August 19, 2013.
6. Appellant has submitted to the Board no further pleading or correspondence since its Notice of Appeal dated June 27, 2013 and docketed the following day as MSBCA 2857.
7. No counsel has entered an appearance on behalf of appellant.
8. No hearing has been requested.

Decision

First, the Board notes that Sovereign filed the instant appeal without the benefit of professional legal counsel as required by the Code of Maryland Regulations (COMAR) 21.10.05.03. On multiple prior occasions the Board has denied other appeals based upon the failure of an appellant to retain an attorney. See Visions America Community Development Corporation, MSBCA 2701 (May 2010), Pipes and Wires Services, Inc., MSBCA 2709 (June 2010); Delaware Elevator, Inc., MSBCA 2774 (September 2011); and Mercy Family Care Center, Inc., MSBCA 2855 (August 2013).

The final sentence contained in the Board's July 1, 2013 correspondence acknowledging the docketing of the instant appeal specifically advised Sovereign of the necessity to be represented by an attorney at law in proceedings before the Board, plainly stating, "Corporations, partnerships, and joint ventures shall be represented by an attorney at law licensed in Maryland." Yet, today, four (4) months following that notification, no legal counsel has entered an appearance in this matter on behalf of appellant.

Although Sovereign's Notice of Appeal sets forth an elaborate argument supporting its basis of a claim for equitable adjustment, no follow-up Complaint was ever submitted to the Board by appellant. COMAR 21.10.06.06A requires that a Complaint be provided within thirty (30) days following appellant's receipt of the Board's notice of docketing of the appeal. However, that same provision of COMAR permits the Board to deem appellant's initial Notice of Appeal to constitute its Complaint, and the Board does hereby make that determination in appellant's favor, alleviating

Sovereign of the duty to file a formal Complaint in support of its Notice of Appeal.

Appellant is not, however, similarly relieved from the obligation of responding to SHA's Motion to Dismiss. That Motion has been pending for ten (10) weeks, since August 19, 2013. Appellants are required by COMAR 21.10.05.06B(4)(a) to answer a written pleading within fifteen (15) working days of State government after the date of filing. So the State's Motion to Dismiss is unopposed by appellant. In light of Sovereign's failure to retain counsel, failure to respond to the Motion to Dismiss, and failure to request a hearing, it appears as though Sovereign has elected not to proceed further before the Board and instead has abandoned its appeal. Whether or not this is actually the case, the Board is authorized to dismiss the instant appeal for the aforementioned deficiencies and under the circumstances presented here, does hereby deny Sovereign's appeal.

For the foregoing reasons, failure to retain counsel and failure to oppose the State's Motion to Dismiss, that Motion is hereby granted and as a result, this appeal is denied.

Wherefore it is Ordered this _____ day of November, 2013 that this appeal be and hereby is DENIED.

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 2857, appeal of Sovereign Consulting, Inc. Under SHA Contract No. TA4005249.

Dated:

Michael L. Carnahan
Deputy Clerk