

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

In The Appeal of	)	
Visions America Community	)	
Development Corporation	)	
	)	Docket No. MSBCA 2701
	)	
Under	)	
DHR IFB SSA/IHA-01-001-S	)	

**APPEARANCE FOR APPELLANT:                         None**

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

**OPINION BY CHAIRMAN BURNS**

Appellant Visions Community Development Corporation has appealed the finding by Respondent Maryland Department of Human Resources that Appellant is not responsible and, consequently, that all of its bids on the contract at issue were rejected. Because of Appellant's failure to: (1) file a protest with the agency before filing an appeal with the Maryland State Board of Contract Appeals, as required by the Code of Maryland Regulations (COMAR), and, (2) obtain representation by legal counsel, as required by COMAR, this appeal to the Board must be dismissed.

**FINDINGS OF FACT**

1. On January 5, 2010, the Maryland Department of Human Resources ("Department") issued an Invitation for Bids ("IFB") to acquire a roster of qualified "In Home Aide Service Program" providers for chores, personal care,

nursing evaluation/supervision, and respite services. From this list a pool would result from which local Departments of Social Services could purchase services (SSA/IHA-01-001-S).

2. Bids were due to the Procurement Officer by 2:00 P.M. on January 27, 2010.
3. Bid opening occurred on January 28, 2010 at 10:00 A.M.
4. The Department received two hundred and twenty six (226) bids from forty-six (46) Bidders.
5. Appellant Visions Community Development Corporation ("Visions") submitted bids for seven (7) of the nineteen (19) counties for which services were sought.
6. Since 2004, Visions has provided similar services under a contract with the Department. However, this IFB changed the minimum Bidder qualifications and imposed certain minimum licensing requirements on Bidders.
7. In order to insure that Bidders met the required minimum qualifications, Section 3.4 of the IFB required the submission of copies of the Bidder's licenses for the past three (3) consecutive years prior to the IFB response submission date.
8. At the time of bid submission, Visions did not include a copy of any agency license as required by the IFB.
9. On February 17, 2010, the Procurement Officer sent a letter to Visions requesting, among other things, that Visions submit a copy of its licenses for the past three years as required in Section 3.4 of the IFB. The documents required were due no later than 3:00 P.M. on February 23, 2010.
10. Visions did not respond to the Department's February 17, 2010 request.

11. On March 5, 2010, a second letter was sent to Visions. This letter gave Visions until 3:00 P.M. on March 12, 2010 to submit the licenses requested.
12. Prior to March 12, 2010, the Department determined that Visions had never possessed a Home Health, Residential Services, or Nursing Referral Agency license and was, therefore, unable to meet the minimum IFB Bidder requirements.
13. On March 11, 2010, the Department advised Visions that Visions was not a responsible Bidder and that all of its bids were being rejected.
14. Visions received the March 11, 2010 letter on March 12, 2010.
15. Visions did not file a protest of these findings and actions with the Procurement Officer or with the Department.
16. Visions filed an Appeal directly with the Maryland State Board of Contract Appeals ("Board") regarding the Department's March 11, 2010 letter.
17. Visions has not been, and is not at the time of the issuance of this decision, represented by counsel.
18. The Department has filed a Motion to Dismiss Visions' Appeal based on the fact that Visions has not filed a timely protest and has, rather, appealed directly to the Board.
19. Visions filed a letter with the Board dated April 12, 2010 regarding the Department's Motion to Dismiss.
20. Neither party has requested a hearing regarding the Department's Motion to Dismiss which will, therefore, be decided on the record herein.

## Decision

The Department's Motion to Dismiss must be granted. This Board has jurisdiction over protests which are timely filed. COMAR 21.10.02.10 states:

Protestors are required to seek resolution of their complaints initially with the procurement agency. A subsequent appeal by an interested party shall be filed within 10 days of receipt of notice of the final procurement agency action.

See also, State Finance and Procurement Article, §15-220(a) and §15-220(b) (1).

There was no protest of the agency's determination and decision letter of March 11, 2010 filed by Visions with either the Procurement Officer or the Department. There is, therefore, no final agency decision from which Visions may appeal to this Board. This Board is, therefore, without jurisdiction to consider Visions' premature Appeal, and the Department's Motion to Dismiss Visions' Appeal must be granted.

Furthermore, Visions' Appeal must be dismissed because Visions is not represented by a properly qualified attorney. Visions America Community Development Corporation 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." Visions has no such representation in this Appeal.

Visions was specifically notified by the Board of this regulatory requirement for representation by way of a letter dated March 18, 2010. Clearly, Visions had actual, as well as

constructive, knowledge of this COMAR requirement for representation by counsel.

Visions cannot maintain the prosecution of this action without representation by an attorney at law licensed in Maryland. No attorney represents Visions in this Appeal. Over a month has passed since the filing of this Appeal by Visions - ample time for Visions 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.

Visions' failure to comply with the requirements of COMAR 21.10.05.03, in spite of 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.

Wherefore, it is Ordered this            day of May, 2010, that the appeal of Visions America Community Development Corporation in the above-captioned matter is dismissed with prejudice.

Dated:

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Michael W. Burns  
Chairman

I Concur:

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Michael J. Collins  
Board Member

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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.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2701, appeal of Visions America Community Development Corporation under DHR IFB SSA/IHA-01-001-S.

Dated:

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Michael L. Carnahan  
Deputy Clerk