

**STATE OF MARYLAND
BOARD OF CONTRACT APPEALS
6 St. Paul Street
Suite 601
Baltimore, Maryland 21202-1608
Telephone: (410) 767-8228
Toll Free Telephone: 1-800-827-1135**

**SUMMARY ABSTRACT
DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

Docket No. 2666	Date of Decision: 08/06/09
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification:	Under Salisbury University IFB No. SU-09067-CP
Appellant/Respondent:	Williamsport Cabinetry, LLC Salisbury University

Decision Summary:

Final Agency Action Requirement - Under University of Maryland System Procurement Policies and Procedures, a Procurement Officer's decision constitutes an agency's final decision. Since no such decision had been issued herein, there was no final agency action to be appealed to the MSBCA and the MSBCA was without jurisdiction to consider this appeal.

THESE HEADNOTES ARE PRODUCED FOR ADMINISTRATIVE REFERENCE AND OPERATIONAL USE ONLY AND SHOULD NOT BE CONSIDERED "OFFICIAL TEXT" OF THE DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS, NOR SHOULD IT BE REFERENCED OR GIVEN ANY LEGAL STATUS. A COPY OF THE FULL AND COMPLETE DECISION SHOULD BE CONSULTED AND REFERENCED. FOR FURTHER INFORMATION, CONTACT THE BOARD OF CONTRACT APPEALS.

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

In The Appeal of)
Williamsport Cabinetry, LLC)
)
) Docket No. MSBCA 2666
)
Under Salisbury University)
IFB No. SU-09067-CP)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Joy K. Gaslevic
Assistant Attorney General
Baltimore, Maryland

OPINION BY CHAIRMAN BURNS

Appellant Williamsport Cabinetry, LLC. has appealed the award of a contract for the Holloway Hall Psychology Department relocation project by Salisbury State University to another bidder. Since there is no final decision of the procurement officer regarding Appellant's protest, Appellant's appeal to the Board is premature and must be dismissed.

FINDINGS OF FACT

1. On May 12, 2009, Respondent Salisbury State University ("Salisbury State") issued an Invitation for Bids (IFB"), styled by Appellant Williamsport Cabinetry, LLC ("Williamsport") as "IFB #SU-09067-CP", for its Holloway Hall Psychology Department relocation project.
2. On June 5, 2009, Salisbury State determined that Harper & Sons, Inc. ("Harper") was the apparent low bidder.

3. After Salisbury State's evaluation of Harper's bid documents, Salisbury State determined that Harper was the low responsive and responsible bidder.
4. On June 9, 2009, Harper was notified of this determination.
5. On June 11, 2009, all other bidders were also notified of this determination.
6. On June 12, 2009, Appellant Williamsport submitted a protest to Salisbury State regarding this award.
7. Williamsport claimed an alleged mathematical error on Harper's Part V Bid Form and alleged errors on Harper's MBE Attachment B.
8. Salisbury State is still investigating the issues raised in Appellant's protest and has not issued a final procurement agency action (decision) in response to this protest.
9. Williamsport filed an appeal with the Maryland State Board of Contract Appeals which was received and docketed on June 23, 2009.
10. On July 1, 2009, Salisbury State filed a Motion to Dismiss Williamsport's Appeal for lack of jurisdiction.
11. There has been no response from Williamsport regarding Salisbury State's Motion.
12. No hearing was requested by any party regarding this Motion, which will, therefore, be decided on the record presented herein.

Decision

University of Maryland System Procurement Policies and Procedures, Section X(A)(1) requires that, "[a]n aggrieved

party shall exhaust administrative remedies provided in this [Protests and Claims] section before seeking judicial review.”

Section X(A)(7) requires that the Procurement Officer issue a decision on a protest that constitutes the agency’s final action with regard to the protest.

Since there is no final agency action regarding Williamsport’s protest, there is no final agency decision regarding the protest to appeal to the Board at this point in time.

The Board is, therefore, without jurisdiction to consider Williamsport’s appeal at this time. Respondent’s Motion to Dismiss must, as a result, be granted, and the appeal must be dismissed.

Wherefore, it is Ordered this day of August, 2009 that Respondent’s Motion to Dismiss is granted, and the appeal of Williamsport Cabinetry, LLC in the above-captioned matter is dismissed.

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 2666, appeal of Williamsport Cabinetry, LLC under Salisbury University IFB No. SU-09067-CP.

Dated:

Michael L. Carnahan
Deputy Clerk