

Appellant as "Salisbury Readiness Center DGS Project No. M-561-100-004".

2. This contract is being handled by Respondent Maryland Department of General Services ("DGS").
3. Nason filed an appeal with the Maryland State Board of Contract Appeals which was received on June 18, 2009 and docketed on June 23, 2009.
4. DGS is still investigating the issues raised in Appellant's protest.
5. There is no final procurement officer's decision regarding Nason's protest.
6. On July 1, 2009, DGS filed a Motion to Dismiss Nason's Appeal for lack of jurisdiction.
7. There has been no response from Nason regarding DGS's Motion.
8. No hearing was requested by any party regarding this Motion, which will, therefore, be decided on the record presented herein.

Decision

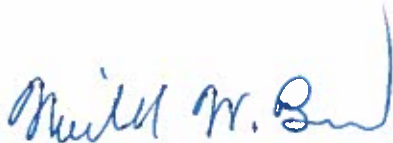
COMAR 21.10.02.10A. requires a protestor "to seek resolution of their complaints initially with the procurement agency" and notes that an appeal to the Maryland State Board of Contract Appeals ("Board") lies only after "receipt of notice of the final procurement agency action."

Since there is no final agency action regarding Nason'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 Nason's appeal at this time. See, e.g., Hess Fence and Supply Company, Inc., MSBCA 2061, 5 MSBCA ¶438 (1998); Advance Presort Service, MSBCA 1891, 5 MSBCA ¶384 (1995). Respondent's Motion for Dismissal for Lack of Jurisdiction must, as a result, be granted, and the appeal must be dismissed.


Wherefore, it is Ordered this ^{6th} day of August, 2009 that Respondent's Motion for Dismissal for Lack of Jurisdiction is granted, and the appeal of Nason Construction, Inc. in the above-captioned matter is dismissed.

Dated: 6 August 2009




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 2665, appeal of Nason Construction, Inc. under DGS Project No. M-561-100-004.

Dated:

August 6, 2009



Michael L. Carnahan
Deputy Clerk