



2. Part I, paragraph B. of the IFB provided as follows:

Bidder Qualification - TO BE ELIGIBLE TO QUALIFY AS  
INDEPENDENT AUDITOR, THE  
FOLLOWING MINIMUM  
REQUIREMENTS MUST BE MET:

1. The firm of certified public accountants must be of widely recognized ability and standing, and licensed to practice in Maryland. The firm must be nationally recognized with extensive experience in governmental accounting and auditing, particularly at the State level, and in Authorities or governmental agencies operating toll revenue projects for roads, tunnels or bridges having revenues in excess of \$50,000,000 annually.
  2. The firm must be a member of the American Institute of Certified Public Accountants (AICPA).
  3. The bidder must have available adequate staff expertise, experience, organization and support personnel to perform this work within the time frame required.
  4. The bidder must adequately demonstrate capability and experience to cope with the requirement of the work to be performed.
3. The bid form attached to the IFB required that certain information be provided with the bid. This information was described as follows:

IV. Bidder Qualifications

A. Indicate those factors which support the firm's standing as a nationally recognized organization.

B. Describe recent auditing experience similar to the type of audit requested in Part I Section B.1 of the Invitation for Bids, and give the names and telephone numbers of client officials responsible for three (3) such completed audits, including at least one audit of Authorities or governmental agencies operating toll revenue projects for roads, tunnels, or bridges having revenues in excess of \$50,000,000 annually.

4. Bids were opened on June 29, 1982. Appellant's \$75,000 bid was identified as the lowest of the nine bids received. The next lowest bid was submitted by Arthur Anderson & Company in the amount of \$78,500.

5. Attached to Appellant's bid forms were a written description of its relevant corporate experience and resumes of those individuals who would be assigned to the project. After reviewing this information, the Authority concluded that Appellant did not meet the minimum bidder qualifications required under the IFB and therefore rejected Appellant's bid as non-responsive. Appellant was apprised of this finding by letter dated June 29, 1982 as follows:

The unresponsiveness on [sic] your bid is based on the following:

Section IV B of the Bid Form, included in the contract documents that you received, requires that you give the names and telephone numbers of client officials responsible for three completed audits of the type described in Part I Section B. 1. of the Invitation of Bids [sic] "including at least one audit of authorities or governmental agencies operating toll revenue projects for roads, tunnels or bridges having revenues in excess of \$50 million annually."

On Page II - 3 of your Proposal, you list the Southern California Rapid Transit District and the Elizabeth River Tunnels as two governmental agencies operating toll revenue projects. When we contacted these two agencies, we discovered that: 1) Southern California Rapid Transit District does not operate any toll roads, bridges or tunnels, and that 2) the annual revenue of the Elizabeth River Tunnels is approximately \$5 million. Inasmuch as neither agency met the criteria established in Section IV B of our Bid Form, your proposal has been determined to be unresponsive.

6. By letter dated July 6, 1982, Appellant protested the action of the Authority on the grounds that: (1) it had the prerequisite auditing experience specified in the IFB, (2) the requirement that a firm have experience in auditing a Toll Authority having revenues of \$50 million annually is meaningless unless the personnel assigned to the State contract also are shown to have that experience, and (3) the experience and qualifications of the personnel it committed to this job were superior to those of its competitors. In support of its contention that it had the required experience, Appellant apprised the Authority that it recently had audited the Florida Turnpike Authority, an agency with annual revenues in excess of \$50 million. This agency had not been listed by Appellant on its bid form because it was under the impression that only current clients were to be evaluated.

7. The Authority's procurement officer denied the protest in a final decision dated July 9, 1982. While the procurement officer acknowledged that Appellant's Florida Turnpike Authority experience would have been sufficient to satisfy the IFB bidder qualifications requirement, the late submission of this information was determined to be impermissible.

8. Appellant received a copy of the procurement officer's final decision on July 12, 1982. An appeal thereafter was hand delivered to the Board on July 28, 1982 at 3:50 p.m., 16 days after receipt by Appellant of the final decision.

9. During the hearing, Appellant's Mr. Ashby testified that he was told by his associates that an attempt had been made to deliver the appeal to the Board on July 27, 1982. Mr. Ashby further explained that, on the date of the attempted delivery, his secretary had called the phone number listed in the telephone directory for the Board and was connected instead with the Maryland Department of Transportation. (MDOT).<sup>1</sup> Mr. Ashby's secretary purportedly was told to deliver the appeal to the receptionist at MDOT headquarters. However, when the appeal was delivered, Appellant's representatives allegedly were informed by an MDOT employee that the Board had moved to a new location. Appellant did not make any effort to contact the Board that afternoon to ascertain its new location and arrange for delivery of the appeal.

10. The Authority awarded a contract to Arthur Anderson & Company on July 14, 1982.

#### Decision

Although the Board is troubled by the Authority's rejection of Appellant's bid under the foregoing facts, the captioned appeal must be dismissed as untimely. As we previously have held, the statutory appeal period is a mandatory requirement which must be satisfied to perfect jurisdiction. Jorge Company, Inc., MSBCA 1047, July 7, 1982; McLean Contracting Company, MSBCA 1108, December 21, 1982. When Appellant failed to file its appeal within the 15 day calendar period prescribed by law and regulation,<sup>2</sup> the final decision of the Authority's procurement officer became binding and the right to an appeal was lost. COMAR 21.10.02.09C.<sup>3</sup>

<sup>1</sup>This Board originally was known as the Maryland Department of Transportation Board of Contract Appeals and was located at MDOT headquarters. On July 1, 1981, the Board became an independent statewide agency and ultimately relocated to its present office in December 1981. Notice of this move was published in the Maryland Register dated May 28, 1982. See 9:11 Md. R. 1193 (May 28, 1982).

<sup>2</sup>See Md. Ann. Code, Art 21, § 7-201(d)(1); COMAR 21.10.02.09A. Also, COMAR 21.01.02.25 which defines a "day" as a calendar day unless otherwise designated.

<sup>3</sup>COMAR 21.10.02.09C provides that:

Any appeal received at the Appeal Board's offices after the time prescribed in this regulation may not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, before the final date for filing an

In view of the substantive facts involved, the Board's decision to dismiss this appeal may seem especially harsh. However, Appellant was apprised in the Authority's final decision that it had 15 days to file an appeal with this Board. Although Appellant allegedly attempted timely delivery to the wrong address, it thereafter did not telephone the Board or otherwise try to file the appeal at the proper address until it was too late. A prudent bidder, under the same circumstances, immediately would have contacted the Board for direction and advice as to how its appeal could be timely filed.

For the foregoing reasons, therefore, the appeal is denied.

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appeal as specified in these regulations . . . .

In view of the fact that the Board of Directors of the company has approved this proposal, it is recommended that the Board of Directors be authorized to take such action as may be necessary to carry out the provisions of this resolution.

For the Board of Directors, \_\_\_\_\_

Very truly yours,  
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