

City. The court appeal apparently was taken because of concern that the filing of a motion for reconsideration would not toll the period provided by law for such an appeal.

We conclude that the filing of a timely motion for reconsideration suspends the finality of the Board's decision until such time as the motion is ruled on. American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 541 (1970); Dayley v. United States, 169 Ct.Cl. 305, 309 (1965); Precision Piping, Inc. v. United States, Ct.Cl. Order (5 March 1982). Since the Maryland Administrative Procedure Act (APA) contemplates the taking of a judicial appeal only from a final decision of an administrative agency, the appeal period does not begin to run until after receipt by an aggrieved party of the Board's ruling on a timely motion for reconsideration. See Md. Ann. Code, Art. 41, §255(a). In this manner, the courts also are able to review, under the APA standard, the Board's ruling as to any motion for reconsideration. Compare Brandt v. Montgomery County, 39 Md. App. 147, 162 (1978). Since M&E filed its motion for reconsideration in a timely manner and prior to taking a court appeal, this Board has jurisdiction to consider the substantive matters raised.

II. Grounds for Reconsideration

M&E essentially argues that the decision in the captioned appeal was premised upon issues that were not identified prior to hearing or addressed by the parties. For this reason, it requests an opportunity to be heard and offer evidence as to:

1. Whether Johnson was a responsible bidder and thus entitled to an award under competitive sealed bid principles?
2. Whether the proposal submitted by Johnson was sufficiently acceptable to warrant further negotiations?

Although we agree that M&E did not have an opportunity to fully argue and present evidence as to the preceding issues at hearing, we conclude that resolution of these issues is both unnecessary and inappropriate.

The record before this Board indicates that Johnson submitted the lowest price for the base bid items and alternates 1 and 2. Under competitive sealed bid procedures, Johnson was entitled to an award if the DGS procurement officer determined that it also was a responsive and responsible bidder. See COMAR 21.05.02.13. Conversely, DGS could not have awarded a contract to the second low bidder, M&E, unless it first determined that Johnson was not responsive or responsible. Despite M&E's arguments, on reconsideration, that Johnson was not a responsible bidder, it is not alleged that the DGS procurement officer ever made this determination. In the absence of such a determination by the procurement officer, an award to M&E was improper.

Assuming, on the other hand, that this was a competitive negotiation, M&E's arguments that the Johnson proposal was unacceptable are irrelevant. While COMAR 21.05.03.03 does permit the procurement officer to exclude unacceptable proposals from the negotiation process, again it is not alleged that the DGS procurement officer ever determined that Johnson's proposal was

unacceptable. In the absence of such a determination, there was a duty to negotiate with Johnson and all other responsible offerors before awarding a contract.

In sum, M&E would like for this Board to exercise now the discretion and responsibility given, by law and regulation, to the DGS procurement officer. This is not our function. Instead, it is our responsibility to ascertain whether the DGS procurement officer awarded a contract in accordance with Maryland law. There is nothing in M&E's motion or accompanying proffer which, if taken as true, would alter our conclusion that an award to M&E was impermissible under the circumstances present here.

Finally, both M&E and DGS have raised the issue as to whether a protest concerning the need to apprise offerors of the State's intent to award without negotiation is required to be raised prior to receipt of proposals. We conclude that it is not. Neither Maryland law nor its implementing regulations require that an agency apprise offerors in a request for proposals that it may award a contract without negotiation unless such is the intent of that agency. See COMAR 21.05.03.02A(3). Accordingly, the absence of this caveat in the instant solicitation did not give rise to a protest until an award actually was made without negotiation.

For the foregoing reasons, the motion for reconsideration is denied.

