

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

Docket No. 2372	Date of Decision: 11/25/03
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under DGS Solicitation No. 001IT814532	
Appellant/Respondent: Branch Office Supply Department of General Services	

Decision Summary:

Interested Party - A bidder must be in line for award if its protest were to be sustained. Otherwise, it is not an interested party under COMAR 21.10.02.01B(1) and COMAR 21.10.02.02A, and it lacks standing to protest.

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

In The Appeal of Branch Office)
Supply)
) Docket No. MSBCA 2372
Under DGS Solicitation No.)
001IT814532)

APPEARANCE FOR APPELLANT: None

**APPEARANCE FOR RESPONDENT: John H. Thornton
Assistant Attorney General
Baltimore, Maryland**

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the denial of its bid protest that low bidder Boise Cascade Office Products Corp. (Boise) intends to supply nonconforming products and that the Department of General Services (DGS) ignored the 5% preference for small business. DGS awarded the Contract to Boise in the State of Maryland Advanced Purchasing and Inventory Control System (ADPICS) on August 22, 2003 and in eMaryland Marketplace on August 25, 2003, before receipt of the protest on August 25, 2003 which is the subject of this appeal.¹

Findings of Fact

1. In early July, 2003, DGS issued in eMaryland Marketplace the above captioned Invitation to Bid (ITB).
2. The ITB requested prices for 22 separate line items representing various types of calendars and other office products, and bidders were required to identify the products offered in the comments field of their bids.
3. The ITB provided that award would be made to the bidder submitting the lowest sum of all line items and that bidders

¹Appellant also filed protests concerning this procurement on July 10, 2003 and on August 5, 2003, which protests were each withdrawn the same day they were filed.

- were required to submit prices for all line items. The ITB also provided that the small business preference of 5% would apply.²
4. Bids were due in eMaryland Marketplace on July 9, 2003 by 2:00 p.m.
 5. The Procurement Officer opened bids in eMaryland Marketplace at 8:25 a.m. on July 10, 2003, and at that time bids were available for public inspection. The bids received were as follows:

Allied Office Products (Allied)	\$162,650.52
Office Depot Business Service Division (Office Depot)	\$163,278.77
Boise	\$163,347.62
Rudolphs Office & Computer Supply, Inc. (Rudolphs)	\$163,909.53
The Supply Room Companies, Inc. (Supply Room)	\$164,852.84
AJ Stationers, Inc. (AJ)	\$167,769.31
Branch Office Supply Co., Inc. (Appellant)	\$171,076.23

6. The bids of Allied, Rudolphs, and Supply Room were rejected as nonresponsive for offering nonconforming items under Line Items 20, 21, and 22. The bid of Office Depot was rejected as nonresponsive for failure to identify the products offered.
7. After the rejection of those four bids, the remaining responsive bids were those of Boise, AJ, and Appellant.
8. The four bidders whose bids were rejected were notified of the rejection in writing on or about July 29, 2003. Office Depot, Rudolphs, and Supply Room did not protest. Allied protested the rejection of its bid, and the Procurement Officer denied the protest in a decision which Allied received on August 8, 2003. Allied did not appeal that decision.
9. Boise does not qualify as a small business for the 5% small

²See *State Finance and Procurement Article §§ 14-201 et seq.*; COMAR 21.11.01.01; and COMAR 21.01.02.01B(80).

business preference. The Procurement Officer obtained written confirmation from the DGS office that administers the small business enterprise verification that neither AJ nor Appellant qualified as a Maryland small business. If AJ or Appellant had qualified as a small business, they would have been entitled to the small business preference of 5% and would have been entitled to award over Boise.

10. On July 29, 2003, the Procurement Officer received confirmation from Boise by email that, as it promised in its bid, Boise would provide under ITB Line Items 4, 5, 20, 21, and 22 products which conform to the requirements of the ITB.
11. The Procurement Officer entered the award in eMaryland Marketplace, which was accessible to all bidders, on August 25, 2003, and later that same day Appellant submitted the protest which is the subject of this appeal. The grounds for the protest were that:
 1. Appellant believed that Boise must intend to supply nonconforming products for those of State Use Industries (SUI) required under Line Items 4 and 5 since Boise's bid for those SUI products is below the price quoted by SUI and stated in the ITB;
 2. Appellant believed that Boise must intend to supply nonconforming products under Line Items 20, 21, and 22; and
 3. Appellant believed "the 5% preference for small business was ignored."
12. By final agency decision dated September 18, 2003, the Procurement Officer denied Appellant's protest on the grounds that (1) Boise had confirmed that it would supply the products required under Line Items 4, 5, 20, 21, and 22; (2) Boise would supply the required SUI products at the price bid even though

- that price was below the price charged by SUI; and (3) neither AJ nor Appellant qualified for the 5% small business preference.
13. The Procurement Officer's decision was received by Appellant on September 24, 2003, and Appellant filed an appeal with the Board on October 2, 2003.
 14. Appellant did not comment on the Agency Report, and neither party requested a hearing.

Decision

We first note that Appellant is the third lowest bidder after Boise and AJ, respectively. Appellant has not protested against any possible award to AJ, and the record does not otherwise reflect that AJ would not be eligible for award if the award to Boise were overturned. Therefore, Appellant is not in line for award even if its protest against award to Boise were found to have merit. Thus, Appellant is not an "interested party" under COMAR 21.10.02.01B(1) and COMAR 21.10.02.02A. Accordingly, Appellant lacks standing to protest, MTI, MSBCA 1725, 4 MSBCA ¶ 326 (1993) and cases cited at p.2, and the appeal is dismissed.

Assuming *arguendo* that the Appellant has standing, we would also deny the appeal on the merits. Nothing in Boise's bid for Line Items 4, 5, 20, 21, and 22 indicates that Boise took any exceptions to the requirements of the ITB. Therefore, Boise's bid was responsive with respect to Line Items 4, 5, 20, 21, and 22. The Procurement Officer received written confirmation from Boise that in actual performance of the Contract, Boise will furnish the products required under Line Items 4, 5, 20, 21, and 22. Thus, there is no basis for determining that Boise is not a responsive or responsible bidder with respect to those Line Items.

Concerning the ground of protest that DGS ignored the 5% small business preference, the record reflects that the Procurement Officer has confirmed that Appellant does not qualify as a Maryland small business. We too find Appellant is not a Maryland small business

entitled to the 5% small business preference for this procurement. Accordingly, the appeal would be denied on the merits.

Wherefore, it is Ordered this day of November, 2003 that the appeal is dismissed on grounds Appellant lacks standing.

Dated:

Robert B. Harrison III
Chairman

I Concur:

Michael W. Burns
Board Member

Michael J. Collins
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 2372, appeal of Branch Office Supply under DGS Solicitation No. 001IT814532.

Dated:

Michael L. Carnahan
Deputy Recorder