

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

Docket No. 2539	Date of Decision: 07/20/06
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under MTA Solicitation No. T-1128	
Appellant/Respondent: Snake River Land Company, Inc. Maryland Transit Administration	

Decision Summary:

Minority Business Enterprise - Jurisdiction-Pursuant to COMAR 21.11.03.14 acts or omissions by a procurement agency regarding Minority Business Enterprise (MBE) issues may not be appealed, and the MSBCA is, therefore, without jurisdiction to hear such appeals.

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.

2. The MTA is the public transportation arm of the Maryland Department of Transportation and maintains various public bus, subway, and rail systems.
3. The purpose of the IFB was to procure services necessary for the accomplishment of minor construction, repairs, and installation work in relation to systems equipment on the Baltimore Metro, MARC, Bus Divisions and the Central Light Rail Line services located within the MTA service district.
4. The IFB contained an overall Minority Business Enterprise (MBE) subcontract participation goal of 25% of the total contract dollar amount.
5. The IFB notified all potential bidders that:

"If a bidder or offeror fails to submit Attachment A and Attachment B at with [sic] the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award."

Bold in original text.
6. Bids received by the MTA were publicly opened on October 27, 2005.
7. Appellant Snake River Land Company, Inc. (Snake River) returned Attachment A, committing to the 25% MBE goal.
8. Snake River returned Attachment B as well.
9. The Procurement Officer found, however, that Snake River did not complete Attachment B.
10. The Procurement Officer further found that Snake River had "added language that changed the requirement for submission of the MBE information."

11. The Procurement Officer further determined that since Snake River did not submit its bid in conformity with the instructions to bidder's, Snake River's bid was determined to be non-responsive.
12. The Procurement Officer notified Snake River by letter dated April 4, 2006, that the MTA was rejecting Snake River's bid as not responsive because the bid did not conform in all respects to the requirements contained in the IFB, citing the facts noted previously concerning Attachments A and B.
13. The MTA noted in the letter of April 4, 2006 that it had recommended the award of the contract to Intellect Corporation (Intellect).
14. By way of a letter dated April 12, 2006, Snake River protested the award of the contract to Intellect and the Procurement Officer's decision.
15. In its protest, Snake River disagreed with the Procurement Officer's findings regarding Attachments A and B and alleged that the findings of the Procurement Officer were "a mishandling of the procurement process, contrary to the tenants of competitive public bidding and clearly against the law."
16. The Procurement Officer denied Snake River's protest by way of a letter dated May 2, 2006. In that letter, the procurement officer found that Snake River's protest was without merit, finding that Snake River's bid was "non-responsive because it did not comply with the MBE requirements" of the IFB.
17. On May 15, 2006 OCF filed the instant appeal with the Maryland State Board of Contract Appeals

(Board). Snake River has alleged that the determination of the Procurement Officer and the MTA regarding the finding that Snake River's bid was non-responsive was in error and should be reversed by the Board.

18. Respondent filed a Motion to Dismiss or in the alternative for Summary Judgment on May 31, 2006.
19. Appellant responded to the Respondent's Motion by way of a Response dated June 15, 2006.
20. No party requested a hearing of Respondent's Motion.

Decision

Respondent asserts that, pursuant to COMAR 21.11.03.14, this Board is without jurisdiction to consider Appellant's appeal in this matter. Respondent is correct.

COMAR 21.11.03.14 states:

.14 Protest

A protest under COMAR 21.10.02 (the regulation providing for protests such as Snake River's) may not be filed:

- A. To challenge a decision whether an entity is or is not a certified MBE; or
- B. Concerning any act or omission by a procurement agency under this chapter.

This Board has been clear that to the extent that an appeal deals with alleged acts or omissions by an agency regarding MBE issues, no bid protest concerning such alleged acts or omissions may be filed. See James F. Knott Construction Co., Inc., MSBCA 2437, ___ MSBCA ___ (2004).

This appeal is clearly precluded by COMAR 21.11.03.14. The Procurement Officer and the MTA found that Snake River failed to comply with various MBE requirements in the IFB

herein and that Snake River's bid was, therefore, non-responsive.

Such findings may be right or they may be wrong, but under COMAR 21.11.03.14 the Board of Public Works has quite clearly decided that such findings, involving as they clearly do "acts or omissions by a procurement agency" regarding MBE issues, can not be protested to the "appropriate procurement officer", COMAR 21.10.02 . Since no bid protest may be filed with the procurement officer, there can be no decision on such a protest from which an appeal to this Board may be taken. James F. Knott Construction Co., Inc., *supra*. The Board, therefore, has no jurisdiction over Snake River's instant appeal.

The Board, after consideration of Respondent's Motion and Appellant's Response to that Motion, finds that COMAR 21.11.03.14 is controlling, that no appeal lies to this Board in this matter, that the Board is without jurisdiction over this appeal, and that Appellant's Appeal must, therefore, be dismissed with prejudice.

Wherefore, it is Ordered this day of July, 2006 that the appeal is dismissed with prejudice.

Dated:

Michael W. Burns
Chairman

I Concur:

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 2539, appeal of Snake River Land Company, Inc. under MTA Solicitation No. T-1128.

Dated:

Michael L. Carnahan
Deputy Recorder