

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of Curtis Engine &)
Equipment, Inc.)

))
) Docket No. MSBCA 2628

Under DGS IFB #001IT817334)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Turhan E. Robinson
Assistant Attorney General
Baltimore, Maryland

OPINION BY CHAIRMAN BURNS

Appellant timely appeals the denial of its protest concerning a contract to supply and install a generator and UPS system for the Maryland Public Television broadcasting station because Appellant was not an interested party to the procurement. For the reasons which follow, Respondent's Motion for Summary Disposition, or in the alternative, Motion to Dismiss, is granted.

FINDINGS OF FACT

1. Respondent, the Maryland Department of General Services ("DGS), is a state agency which "serves Maryland and its citizens by supporting other state agencies in achieving their missions."

2. On June 2, 2008, DGS posted an Invitation for Bids ("IFB") on eMaryland Marketplace.
3. This IFB, No. 001T817334, requested bids to supply and install a backup generator and UPS system for the Maryland Public Television ("MPT") broadcasting station to keep the station on the air in the event of a power outage.
4. A pre-bid conference and site visit was conducted at MPT by the DGS Procurement Officer.
5. Nine (9) Vendors attended the pre-bid conference.
6. As a result of comments received at concerning the pre-bid conference, an amendment to the IFB was issued on June 18, 2008.
7. Bid opening was held on June 26, 2008.
8. There were five (5) bids received. Bids were submitted and received on-line.
9. Four "No Bids" occurred.
10. Appellant Curtis Engine & Equipment, Inc. ("Curtis") submitted a response to the solicitation as a "No Bid."
11. Curtis submitted no other bid information as part of its "No Bid" response.
12. The technical evaluations of the bids received were conducted from June 26, 2008 through August 1, 2008.
13. Curtis contacted the Procurement Officer for the bid results on August 4, 2008. Curtis submitted a protest on that same day.
14. Curtis's protest was denied by the Procurement Officer, Linda Ruley, by way of a letter dated September 19, 2008.

15. The protest was denied because the Procurement Officer found that Curtis was not an interested party to the procurement since Curtis had not submitted a bid for the solicitation.
16. Curtis filed a timely appeal of the denial of its protest with the Maryland State Board of Contract Appeals (Board) on September 25, 2008 which was docketed on September 26, 2008.
17. The appeal of Curtis was signed by Paul J. Koch, Chief Operating Officer.
18. As of the date of the issuance of this decision, Curtis is not represented by an attorney licensed to practice law in Maryland.
19. Respondent filed a Motion for Summary Disposition, or in the alternative, Motion to Dismiss, on October 20, 2008.
20. Curtis did not respond to the Motion filed by Respondent.
21. No hearing was requested by either party regarding Respondent's Motion or the appeal itself.

DECISION

COMAR 21.10.05.03A states that a corporation, partnership, or joint venture shall be represented before the Board by an attorney at law licensed to practice in Maryland. Curtis is incorporated.

Curtis has not complied with the requirement of COMAR 21.10.05.03A. No attorney licensed to practice in Maryland

has entered an appearance on behalf of Curtis as required by this regulation.

As the Board recently noted in Outdoor Outfitters, MSBCA 2588, ____ MSBCA ____ (November 16, 2007) this is not the first time that an entity subject to this requirement has failed to comply with this requirement and the Board has stated that this regulation cannot simply be ignored by an appellant to which it applies.

The failure of Curtis to comply with this COMAR requirement must result in a finding that Curtis cannot pursue this appeal before the Maryland State Board of Contract Appeals.

The Board does not desire to deprive anyone, be they an individual, a partnership, a corporation, or, a joint venture, of the ability to appeal to the Board. COMAR regulations are, however, regulations, not "suggestions". COMAR 21.10.05.03A clearly requires Curtis to be represented by an attorney. Curtis is not so represented.

The Motion of Respondent for Summary Disposition, or in the alternative, Motion to Dismiss is, therefore, granted.

For the record, the Board further notes that Respondent's Motion would also have been granted because Curtis is not an interested party herein and is, therefore, without standing to file the instant protest and appeal.

COMAR 21.10.02.01B.(1) defines an "interested party" as "an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest."

Curtis did not submit a responsive bid to the IFB herein. It submitted a "No Bid".

Curtis' arguments that "it spent hours with MPTV and MPTV visited our offices to help MPTV write the specifications correctly" and that it "did submit a response to the solicitation as a 'No Bid'" are not persuasive.

Appellant, by its own admission, did not submit a responsive bid to the Invitation for Bids. Curtis is not, in any fashion, in line for possible award of this contract.

The Board has repeatedly held that a protestor is not an interested party, and thus lacks standing to pursue a protest, where that protestor cannot show that were the protest to be sustained, it would be in line for award. James F. Knott Construction Co., Inc., MSBCA 2437, 6 MSBCA ¶555 (2004) at p.3; Branch Office Supply, MSBCA 2372, 6 MSBCA ¶540 (2003). See also, APEX Environmental, Inc., MSBCA 2009, 5 MSBCA ¶422 (1997); BFI Waste Systems of North America; MSBCA 2115, 5 MSBCA ¶462 (1999).

Curtis submitted a "No Bid." It noted in its appeal to the Board that it is "not qualified to complete the work necessary to bid this job in its entirety."

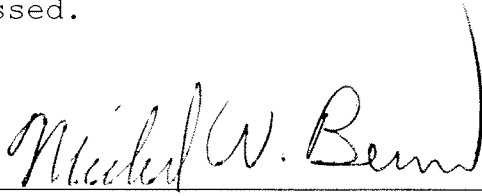
Since Curtis cannot and does not seek the award of this contract for which it did not submit a bid, Curtis is without standing, therefore, to pursue this appeal. See, James F. Knott Construction Co., Inc., *supra*.

Respondent's Motion would, therefore, have been granted on this ground as well.

Respondent's Motion is, therefore, granted.

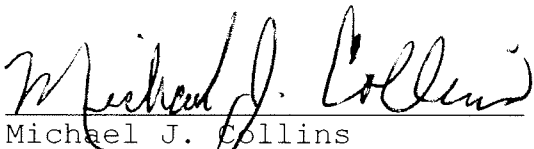
Wherefore, it is Ordered this 18th day of December, 2008 that Respondent's Motion for Summary Disposition, or in the alternative, Motion to Dismiss, in the above-captioned matter is granted, and the appeal of Curtis Engine & Equipment, Inc. is dismissed.

Dated: 18th
December
2008




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.

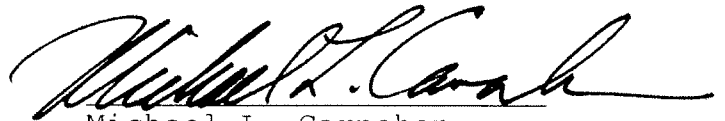
(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2499, appeal of Curtis Engine & Equipment, Inc. under DGS IFB #001IT817334.

Dated:

December 18, 2008



Michael L. Carnahan
Deputy Clerk