

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

In The Appeal of)
DESCO Associates)
)
Under) Docket No. MSBCA 2680
Department of Public Safety &)
Correctional Services RFQ)
DPSCS Q0009045)

APPEARANCE FOR APPELLANT: None

**APPEARANCE FOR RESPONDENT: Michael Doyle
Assistant Attorney General
Baltimore, Maryland**

OPINION BY BOARD MEMBER DOORY

This appeal must be dismissed because appellant did not submit a bid and therefore is not an "interested party" and does not have standing to appeal.

Findings of Fact

1. The Department of Public Safety and Correctional Services (DPSCS) issued a Request for Quotes (RFQ) on May 18, 2009 for the procurement of 18 Auto Clear Model 6040 Rapid Parcel X Ray scanners to be used in correctional facilities. The RFQ stated "No Substitute".
2. The RFQ bids were due June 9, 2009.
3. A bid protest was filed by DESCO Associates (DESCO) on June 2, 2009. DESCO did not submit a bid.
4. Two responsive bids were submitted and Security Detection was recommended for award of contract.

5. On September 24, 2009 the Department (DPSCS) procurement officer denied DESCO's bid protest.
6. DESCO appealed the decision to this Board on September 30, 2009.

Decision

The Department of Public Safety and Correctional Services has submitted a motion to dismiss DESCO's appeal.

DESCO filed a bid protest to the RFQ Q0009045 because they argue that the Department should have considered other brands of x ray scanners. The RFQ however clearly stated "No Substitute".

Only two bids were submitted to the RFQ and DESCO was not one of them. According to COMAR 21.10.02.02A, "An interested party may protest to the appropriate procurement officer against the award or the proposed award of a contract." DESCO did on June 2, 2009 protest to the Department's procurement officer. However, since DESCO never submitted a bid it cannot be an "interested party" as defined by COMAR 21.10.02.01B1 which states "interested party" means an actual or prospective bidder, offeror or contractor that may be aggrieved by the solicitation or award of the contract or by the protest."

Further COMAR at 21.10.02.01.B(3) states "a protester means any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest." DESCO filed a bid protest appeal. It has failed to show it has been aggrieved by the award of the RFQ to another party because DECSO never filed a bid and therefore did not suffer any damage or be in line for an award if an appeal was granted.

It is well settled by the Board that a protester is not an interested party "where it cannot establish that even if the protest were sustained it would be in line for award." James F. Knott Construction Co., Inc., MSBCA 2437, 6 MSBCA ¶555 (2004).

See also, Devaney & Associates, Inc., MSBCA 2477 ____ MSBCA ¶____ (2005); Branch Office Supply, MSBCA 2372, 6 MSBCA ¶540 (2003).

DESCO is not an interested party and as a result does not have standing to appeal to this Board. The motion to dismiss is hereby GRANTED.

Wherefore it is Ordered this _____ day of August, 2010 that the above-captioned appeal is DISMISSED WITH PREJUDICE.

Dated:

Ann Marie Doory
Board Member

I Concur:

Michael J. Collins
Chairman

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 2680, appeal of DESCO Associates under DPS&CS RFQ DPSCS Q0009045.

Dated:

Michael L. Carnahan
Deputy Clerk