

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

In The Appeal of)
Intelect Corp.)
)
) Docket No. MSBCA 2905
)
Under MTA Contract)
No. T-1321-0240)

APPEARANCE FOR APPELLANT: None

**APPEARANCE FOR RESPONDENT: Valerie Green
Assistant Attorney General
Baltimore, Maryland**

OPINION BY BOARD MEMBER DEMBROW

The State's refusal to grant a prospective bidder's request for extension of a bid due date deadline is not a basis for a valid protest or appeal.

Findings of Fact

1. On July 31, 2014 the Maryland Transit Administration (MTA) issued a certain Invitation for Bids (IFB) known as Solicitation No. T-1321-0240 for work related to the re-tagging, re-terminating, testing, and re-splicing of existing, in-service traction power and signal cables on the Baltimore Metro Heavy Rail system. According to the terms of the IFB, bids were due to be submitted to MTA no later than 1:30 p.m. on August 27, 2014. (Agency Report, Tab 10.)
2. A pre-bid conference was conducted by MTA on August 6, 2014, at which time only a single prospective bidder made a personal appearance, namely, representatives of Interested Party Mona Electrical Group, Inc. (Mona). (Agency Report,

Tabs 2, 12.)

3. On August 11, 2014, MTA promulgated Addendum No. 1 to the IFB adding contract appendices to the contract specifications and stating, "This change (does not) [sic] delay the Bid Opening Date of August 27, 2014." (Agency Report, Tab 9.)
4. Addendum No. 2 to the IFB was posted August 22, 2014 making certain revisions to the bid form, namely, adding two line items for "Miscellaneous Work allowance." That Addendum also stated, "This change (does not) [sic] delay the Bid Opening Date of August 27, 2014." (Agency Report, Tab 8.)
5. On August 25, 2014, appellant Intellect Corporation (Intellect) requested that the advertised bid due date be extended beyond August 27, 2014, because of the need for additional time for Intellect "to permit internal review of the impact of Addendum No. 2, received earlier this morning." (Agency Report, Tab 2.)
6. By e-mail sent at 10:02 a.m. on August 27, 2014, the procurement officer informed Intellect that the bid due date and time would not be extended, because "Addendum No. 2 relates to simple edits to the bid form that would not put potential bidders at a disadvantage to submit a responsible bid." That view was debated in further e-mails that were exchanged between MTA and appellant that day regarding Intellect's request to extend the time allowed to submit bids and MTA's refusal to do so. (Agency Report, Tab 2.)
7. Mona submitted the only timely bid in response to the IFB. (Agency Report, Tabs 5, 11.)
8. By correspondence dated September 2, 2014, Intellect filed a bid protest with MTA claiming essentially that MTA should have extended the bid due date. (Agency Report, Tab 2.)
9. MTA denied Intellect's bid protest by correspondence dated September 15, 2015. (Agency Report, Tab 3.)

10. On September 25, 2014, Intellect filed with the Maryland State Board of Contract Appeals (Board) an appeal of MTA's final action denying appellant's bid protest. (Agency Report, Tab 2.)
11. MTA filed its Administrative Record on December 11, 2014.
12. No subsequent pleading was filed in this matter and neither party requested hearing.

Decision

It is not for private vendors as potential bidders to dictate to MTA when bids shall be due. It is perfectly fine for appellant here to have requested an extension of time within which Intellect might have been permitted to complete and submit its bid, but that is a far cry from suggesting that the State must bow to such a request. The State's denial of appellant's request for an extension of the established and well known bid due date deadline appears to be the sole basis of Intellect's protest and appeal. Such a basis is without merit.

The foregoing is not to suggest that bid due date deadlines should not be extended, simply that the decision whether or not to extend a bid due date is well within the lawful discretion of the agency conducting a procurement solicitation. Here it is unfortunate that only a single vendor responded to MTA's IFB, but to answer the question of whether additional vendors might have responded favorably to the solicitation if the due date were to have been postponed is sheer speculation. Appellant states no basis upon which the Board may afford relief.

The Board notes also that this appeal is filed without the benefit of professional legal counsel as required by COMAR 21.10.05.03. The Board specifically informed Intellect of the need to retain counsel by letter dated September 25, 2014, four (4) months ago. The Board has previously ruled that failure of

an appellant to retain an attorney is adequate grounds for denial of an appeal. See Visions America Community Development Corp., MSBCA 2701 (May 2010); Pipes & Wire Svcs, Inc., MSBCA 2709 (June 2010), Del. Elevator, Inc., MSBCA 2774 (Sept. 2011); Mercy Family Care Ctr., Inc., MSBCA 2855 (Aug. 2013); Sovereign Consulting, Inc., MSBCA 2857 (Nov. 2013).

For both of the foregoing reasons, this appeal shall be and hereby is DENIED.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael J. Collins
Chairman

Ann Marie Doory
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 2905, appeal of Appeal of Intellect Corp. Under MTA Contract No. T-1321-0240.

Dated:

Michael L. Carnahan
Deputy Clerk