

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

In The Appeal of)
Letke Security Contractors,)
Inc.) Docket MSBCA No. 2750
Under)
SHA Contract No. 4450341412SB)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Jason D. Couch
Assistant Attorney General
Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This bid protest must be dismissed as untimely for failure to raise substantive objection prior to bid opening.

Findings of Fact

1. The Maryland State Highway Administration (SHA) issued a certain Invitation for Bids (IFB) identified as SHA Contract No. 4450341412SB to secure small business maintenance services for removal of graffiti from various SHA structures located in Baltimore County and for which bids were due on or before October 14, 2010.
2. Appellant Letke Security Contractors, Inc. (Letke) held a previous contract with SHA for similar services and was one (1) of six (6) private entities submitting a bid for selection under the new contract.
3. When bids were opened on October 14, 2010, SHA ranked Letke's bid as the third lowest and also noted that Letke's bid was incomplete and irregular.
4. SHA also noted irregularities in two (2) other of the six (6) bids submitted.

5. Letke submitted a bid protest dated October 18, 2010 which raised three (3) objections, specifically, (1) that bid directions were not clear, (2) that the area estimated for required service was inconsistent with actual past need for service, and (3) that because of the underestimate of the amount of work likely to be required, SHA's anticipated budget was inadequate.
6. SHA denied Letke's bid protest by letter dated November 19, 2010.
7. Pursuant to the Code of Maryland Regulations (COMAR) 21.10.02.10, a bid protest to the Maryland State Board of Contract Appeals (Board) must be filed within ten (10) days of receipt of notice of final agency action on the procurement.
8. By letter dated November 22, 2010 but not received by the Board until December 1, 2010, Letke noted an appeal which was docketed as MSBCA No. 2750.
9. By letter dated and mailed December 2, 2010, the Board notified Letke that corporations "shall be represented by an attorney at law licensed in Maryland" pursuant to the requirement set forth in COMAR 21.10.05.03.
10. SHA filed its Agency Report on January 11, 2011.
11. Pursuant to COMAR 21.10.07.03(D), appellant had ten (10) days within which to offer its Comments on the Agency Report, but to date, Letke has offered none.
12. No party has requested a hearing pursuant to COMAR 21.10.07.06 and no counsel has entered an appearance on behalf of appellant as required by COMAR 21.10.05.03.

Decision

COMAR 21.10.02.03(A) provides that "a bid protest based upon alleged improprieties in a solicitation that are apparent before bid opening...shall be filed before bid opening." This is a fundamental principle of government procurement law and one which has often been reiterated and relied upon in prior decisions by the Board. See Harford Alarm Company, MSBCA 2371, 6 MSBCA ¶539 (2003); FMB Laundry, Inc., MSBCA 2136 (1999), 5 MSBCA ¶467 (1999); Bruce D.

Royster, MSBCA 1968, 1969, 5 MSBCA ¶406 (1996); Merjo Advertising & Sales Promotion Co., MSBCA 1948, 5 MSBCA ¶396 (1996); ATI Systems, et al., MSBCA 1911, 1913, 1918; 5 MSBCA ¶387 (1995). Although the precise bases of the instant appeal are somewhat difficult to comprehend as stated by appellant *pro se*, Letke does not appear to make any claim of latent ambiguity in the bid documents, which could potentially avert the application of this regulation and precedent.

The Board finds that all of the allegations of impropriety raised by appellant in this bid protest should have been raised prior to bid opening. Furthermore, even if Letke had raised its objections in timely fashion, the Board is not persuaded that the subject amended IFB contains any contract ambiguity whatsoever nor any other defect that could rise to a level of actionable complaint. In short, SHA was and remains fully within the bounds of legitimate authority to open bids on October 14, 2010, to rank those bids as it fairly determined, and to make award to the low bidder. Based upon the uncontested record in this proceeding Letke fails to sustain its burden of proof and for all of these reasons, this appeal must be and hereby is dismissed.

Wherefore it is Ordered this _____ day of February, 2011 that the above-captioned appeal is DISMISSED.

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 2750, appeal of Letke Security Contractors, Inc. under SHA Contract No. 4450341412SB.

Dated:

Michael L. Carnahan
Deputy Clerk