

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

In The Appeal of	)	
Sanitech, Inc.	)	
	)	
	)	Docket No. MSBCA 2734
	)	
Under	)	
MVA IFB No. V-GAT-10055-M	)	

**APPEARANCE FOR APPELLANT:                   None**

**APPEARANCE FOR RESPONDENT:               Robert C. Cain, II  
Assistant Attorney General  
Baltimore, Maryland**

**OPINION BY BOARD MEMBER DOORY**

The procurement officer acted properly in denying appellant's protest because appellant was non-responsible for contract award. This appeal is therefore dismissed.

**Findings of Fact**

1. On March 22, 2010 the Motor Vehicle Administration (MVA) advertised on eMarylandmarketplace.com for a janitorial services vendor in Solicitation No. V-GAT-10055-M. The janitorial services were to be performed at the MVA's Gaithersburg Branch, Maryland 20878. (Exhibit 1)
2. On April 15, 2010 bids were to be submitted and evaluated. Twenty two (22) bids were received and opened. (Exhibit 2)

3. The MVA procurement officer on July 12, 2010 sent to appellant, Sanitech, Inc., (Sanitech) correspondence stating that its bid "has been determined not responsible." Sanitech had a janitorial services contract, V-GAT-10011-M, with MVA that was terminated early for poor performance and failure to perform. (Exhibit 4)
4. On July 16, 2010 the contract award #61873 was posted on eMarylandmarketplace.com. Acclaim USA, Inc. (Acclaim) was awarded the bid because it was the lowest responsible and responsive bidder. (Exhibit 3)
5. On July 23, 2010 Sanitech sent a letter to MVA protesting the award of the contract to Acclaim. (Exhibit 4)
6. The MVA procurement officer sent another letter to Sanitech informing it that its bid was not responsible because Sanitech had "failed to complete the janitorial contract, V-GAT-10011-M in accordance with the contract specifications, and modification No. 1". (Exhibit 5)
7. Sanitech sent a letter to MVA dated August 27, 2010 that was time stamped as received by MVA on August 27 2010.(Exhibit 6)
8. On September 27, 2010 the procurement officer rendered a final determination denying the protest under COMAR 21.06.01.01 because it was determined that Sanitech had not been responsible while performing the janitorial services on its previous contract, specifically, V-GAT-10011-M and modification No. 1." (Exhibits 5 and 7)
9. The procurement officer's decision determined that Sanitech was non-responsible for the reasons set forth in Exhibit 7 as follows:
  - The MVA received a vendor performance report on November 4, 2009 from the Gaithersburg Branch Manager.

This report outlined Sanitech's deficiencies relating to insufficient staff, insufficient janitorial supplies, Sanitech's quality of work, or lack thereof, and a broken vacuum cleaner.

- After several attempts to resolve the issues over the phone, a vendor performance meeting was scheduled and conducted at the MVA Gaithersburg office on November 17, 2009 between MVA staff and Sanitech. Various issues relating to Sanitech's insufficient staff, lack of floor buffing, and poor and/or non-performance of the monthly tasks were outlined during this meeting.

- A follow-up letter was mailed to Sanitech on November 17, 2009. This letter contained the deficiencies that were discussed at the vendor performance meeting, as well as a request from Sanitech to provide a written response no later than November 30, 2009.

- The MVA received a vendor performance report on November 25, 2009 from the Gaithersburg Branch Manager. This report outlined Sanitech's deficiencies relating to insufficient staff, not providing MVA with updated rosters when changes are made to janitorial crew, and performance issues related to the floor cleaning and buffing, dusting, vacuuming.

- On November 27, 2009, the MVA received a letter from Sanitech in response to MVA's deficiency letter dated November 17, 2009. This letter outlined various reasons why the floors were not completed as planned, and Sanitech's belief that the required number of employees have been provided for this contract.

- A second vendor performance meeting between MVA staff and Sanitech was held at MVA's Gaithersburg office on January 6, 2010. Various issues relating to Sanitech's insufficient staff, non-performance on a number of tasks, including, but not limited to: dusting,

mopping, washing and buffing the floors, and various other uncompleted tasks.

- After several attempts to agree with a resolution, and to end the bickering between the Gaithersburg office personnel and Sanitech, the MVA Procurement Office, by written agreement (Modification Number 1), allowed the term of this contract to expire six (6) months early, on January 30, 2010. Modification Number 1 was issued and signed by Sanitech on January 11, 2010.

- The MVA received a "final" vendor performance report on February 1, 2010 from the Gaithersburg Branch Manager. This report indicated that their performance became worse after the signing of the Modification that allowed for the early termination. It was also stated in the vendor performance report that Sanitech entered the MVA Gaithersburg facility on the last day of their contract obligation, January 30, 2010, and removed their cleaning supplies and equipment, and failed to clean the building.

10. On October 8, 2010 Sanitech filed an appeal to the Maryland State Board of Contract Appeals (MSBCA) which was docketed MSBCA 2734.

### Decision

The undisputed facts in this appeal reveal that Sanitech had a prior janitorial services contract with the Motor Vehicle Administration (MVA), namely, contract No. V-GAT-10011-M with modification No. 1. The undisputed facts further show that Sanitech failed to perform the specifications of that contract by not providing the requisite number of staffers, failing to provide adequate cleaning supplies and equipment, and failing to complete the contract by leaving on

the last day of the contract without performing cleaning services. (Exhibits 7,8,9,10,11,12,13,14)

The MVA procurement officer and the employees at the Gaithersburg facility met in November of 2009 with the contractor, Sanitech, to discuss the cleaning problems and the lack of performance according to the terms of the contract. The problems and non-compliance continued and another meeting was held in January 2010 to further discuss the continuing problems. The parties agreed to a modification to the contract to allow the contract term to expire six (6) months early.

Even after the modification was signed by both parties, the janitorial services were deficient. On the last day of the contract, January 30, 2010, the contractor, Sanitech, collected the cleaning supplies and left the building without performing cleaning services. (Exhibit 13)

Sanitech poorly performed and failed to perform under its contract for janitorial services for the MVA's branch office. COMAR 21.06.01.01 it states:

- A. If a procurement officer determines that a person is not a responsible bidder or offeror, or that the bid is nonresponsive, the procurement officer shall include that determination in the procurement file.
- B. A procurement officer may find that a person is not a responsible bidder or offer for:
  - (1) Unreasonable failure to supply information promptly in connection with a determination of responsibility under this chapter; or
  - (2) Any other reason indicating that the person does not have:
    - (a) The capability in all respects to perform fully the contract requirements, or

(b) The integrity and reliability that will assure good faith performance.

Based upon the undisputed facts that demonstrate a failure of Sanitech to properly perform under the terms of its contract, the procurement officer acted properly and reasonably in accordance with the aforementioned regulation. The procurement officer properly determined that Sanitech did not have "the integrity or the reliability to assure good faith performance" under the contract because the procurement officer interceded several times to resolve problems in the performance of Sanitech's prior contract, all to no avail.

The Board has long held that "poor performance by a company on related contracts certainly can be considered in arriving at a particular determination of whether a potential contractor is responsible." Allied Contractors, Inc., MSBCA 1191, 1 MSBCA ¶79 at p. 7 (1984), Appeal of Environmental Controls, Inc., MSBCA 1356, 2 MSBCA ¶168 (1987).

Under Maryland procurement law, "A procurement officer has broad discretion in determining whether a bidder is responsible. We will not overturn such determination unless shown to be clearly unreasonable, an abuse of discretion, or contrary to laws or regulations." Lamco Corp., MSBCA 1227, 1 MSBCA ¶96 (1985); Allied Contractors, Inc., MSBCA 1191, 1 MSBCA ¶79 at p. 10 (1984); Appeal of National Elevator Company, MSBCA 1252, 2 MSBCA ¶114 at P. 5 (1985); Appeal of Customer Engineer Services, Inc., MSBCA 1332, 2 MSBCA ¶156 at p. 3 (1987).

The procurement officer's final determination is therefore affirmed.

A final issue the Board notes is that Sanitech did not retain counsel as required by COMAR 21.01.05.03. The Board in

its initial acknowledgment letter to Sanitech specifically states "Corporations, partnerships and joint ventures shall be represented by an attorney at law licensed in Maryland." The Board has sought to remind prospective appellants of this obligation by dismissing corporate appeals without benefit of professional legal counsel. Affiliated Computer Services, Inc., MSBCA 2717; \_\_\_\_ MSBCA ¶\_\_\_\_ (2010), Visions America Community Development Corp., MSBCA 2701 \_\_\_\_ MSBCA ¶\_\_\_\_ (2010). Parties involved in the procurement process in Maryland need to follow the rules to protect the fairness of the process.

Wherefore it is ordered this \_\_\_\_ day of December, 2010 that the above-captioned appeal is Dismissed.

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Ann Marie Doory  
Board Member

I Concur:

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Michael J. Collins  
Chairman

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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 2734, appeal of Sanitech, Incorporated under MVA IFB No. V-GAT-10055-M.

Dated:

\_\_\_\_\_  
Michael L. Carnahan  
Deputy Clerk