

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

In The Appeal of)	
Spectrum Health Services, Inc.)	
)	
Under)	Docket No. MSBCA 2686
DPSCS RFP Q0009031)	
)	
)	
)	
APPEARANCE FOR PETITIONER:		Lance M. Young, Esq. Scott A. Livingston, Esq. Rifkin, Livingston, Levitan & Silver, LLC Annapolis, Maryland
APPEARANCE FOR RESPONDENT:		Alan D. Eason Assistant Attorney General Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This appeal arises from an attempt by the Department of Public Safety and Correctional Services (DPSCS) to procure substance abuse assessment evaluations for which appellant Spectrum Health Systems, Inc. (Spectrum) was initially deemed the lowest responsive bidder and intended awardee of the contract, but for which appellant was later deemed by DPSCS to be not reasonably susceptible of being selected for award due to claimed deficiencies in its submission of minority business enterprises (MBE) compliance documentation. Because this appeal concerns only a defect allegedly arising under MBE procurement regulations, this appeal must be dismissed in this forum for absence of jurisdiction allowed to be exercised by the Maryland State Board of Contract Appeals (Board).

Findings of Fact

1. On or about May 29, 2009, DPSCS issued a certain Request for Proposals (RFP) known as Q0009031 soliciting substance abuse assessment services for which an MBE goal of 10% was established and set forth in §1.28.1 of the RFP and for which responses were due by June 23, 2009.
2. On or about June 23, 2009, appellant Spectrum was one of five (5) bidders that submitted proposals in response to the RFP.
3. Spectrum included with its bid the required Form D-2 identifying those subcontractors Spectrum intended to engage to meet the RFP's goal of 10% MBE participation.
4. On or about September 8, 2009, DPSCS notified Spectrum that it was the apparent lowest responsive bidder submitting proposals in response to the RFP and that DPSCS intended to award the contract to Spectrum.
5. Spectrum was afforded ten (10) days from September 8, 2009 within which Spectrum was required to submit Form D-4 by which MBE subcontractors agreeing to perform certain specified work were again identified.
6. The MBE subcontractors identified by Spectrum in Form D-4 differed from those earlier identified in Form D-2.
7. On or about October 13, 2009, DPSCS notified Spectrum that its proposal was not reasonably susceptible of being selected for award because the subcontractors identified in its Form D-4 were different from those initially identified on its Form D-2.
8. On or about October 19, 2009, Spectrum filed a bid protest with DPSCS contending that its determination that Spectrum was ineligible for being selected for award was improper.
9. On or about November 30, 2009, DPSCS denied Spectrum's bid protest of October 19, 2009.

10. On or about December 10, 2009, Spectrum filed with this Board the instant appeal of the DPSCS November 30, 2009 determination to deny Spectrum's bid protest.
11. On or about March 8, 2009, DPSCS filed a Motion to Dismiss the instant Appeal, to which Spectrum filed a Reply.
12. No hearing was requested on the Motion to Dismiss.

Decision

Pursuant to the Code of Maryland Regulations (COMAR) § 21.11.03.14(B), this Board lacks jurisdiction to entertain any bid protest "concerning an act or omission by a procurement agency under this chapter [COMAR 21.11.03]." The only issue raised in this appeal concerns alleged acts and omissions under COMAR 21.11.03. Therefore the Board is without jurisdiction to hear this bid protest. Consequently, this Appeal must be and hereby is DISMISSED.

Wherefore it is Ordered this day of April, 2010, that the above-captioned appeal is dismissed with prejudice.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael W. Burns
Chairman

Michael J. Collins
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 2686, appeal of Spectrum Health Systems, Inc. under DPSCS RFP Q0009031.

Dated:

Michael L. Carnahan
Deputy Clerk