

to Dismiss on June 23, 2011 in advance of filing an Agency Report, and U.K. noted its Opposition on July 8, 2011. Neither party requested a hearing.

The Board notes first that appellant is correct in claiming that a Motion to Dismiss may be granted only in the event of a failure to state a legally sufficient cause of action. At this early stage of the litigation, ambiguities are resolved in favor of the appellant and the Board examines the claim from the perspective of assuming the truth of all facts alleged by appellant. Furthermore, appellant is also correct in asserting that its protest and appeal are timely filed. DHCD's final determination was made on June 15, 2011, and this appeal was formally filed the following day.

Appellant is incorrect, however, in asserting that U.K. is an interested party with standing to pursue an appeal. The Code of Maryland Regulations (COMAR) 21.10.02.02A provides that an interested party may file a protest with the awarding agency and COMAR 21.10.02.01A(1) makes quite clear that that right is enjoyed by an interested party, meaning an actual or prospective bidder. Here it is undisputed that appellant is neither an actual nor a prospective bidder. Instead, U.K. seeks to block award of a State contract to a third party, M&T Bank.

While the Board may be sympathetic to U.K.'s position that it is aggrieved by the apparent decision of M&T Bank not to include U.K. as a subcontractor, that complaint does not afford to U.K. a justiciable claim. Only actual or prospective contractors to the State have standing before the Board because they are the only proper parties with potential privity of contract with the State in the event of contract award. Other legal relationships may be created by a contractor as a result of a contract award, the most common of which is the identification and subsequent hiring of subcontractors like U.K., but that arrangement is formed between the contractor and its subcontractor, not between the subcontractor and the State.

Because U.K. is not an interested party, it has no standing to pursue this appeal. For this reason, the DHCD determination to take no action in response to U.K.'s protest is affirmed.

Wherefore it is Ordered this _____ day of August, 2011 that the above-captioned appeal be and hereby 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 2773, appeal of U.K. Construction & Management, LLC, under DHCD RFP #S00R1400010.

Dated:

Michael L. Carnahan
Deputy Clerk