

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of)
Bond Water Technologies, Inc.)
)
) Docket No. MSBCA 2952
Under University of Maryland,)
College Park RFP No. 84910-W)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: John Y. Lee
Carl Zacarias
Assistant Attorneys General
Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This bid protest appeal must be denied because it was filed more than seven days after appellant had actual knowledge of the basis of an appeal.

Findings of Fact

1. On or about December 2, 2014, the University of Maryland College Park (UMCP) promulgated a certain Request for Proposals (RFP) known as UMCP RFP No. 84910-W to "install and provide all materials, equipment, treatment chemicals and technical supervision to provide UMCP with a complete, properly controlled, continuous water treatment service for heating and cooling equipment located throughout the College Park Campus and its Service Center Locations." (Agency Report, Ex. 1, RFP §C-1.0 at 14.)
2. In accordance with the terms of the RFP, UMCP appointed an Evaluation Committee to review all technical proposals submitted in response to the RFP to determine whether each submitted proposal was "technically acceptable." (Agency

Report, Ex. 1, RFP §§A-1.P and C.2.) The terms of the RFP established that each technically acceptable proposal would be ranked as equivalent, with contract award to be made to the lowest priced technically acceptable proposal. (Agency Report, Ex. 1, RFP §§C-4.0A and L.E.)

3. Three (3) proposals were submitted in response to the RFP, each of which was deemed by the Evaluation Committee to be technically acceptable. They included Coastline Limited (Coastline), with a price of \$123,900, Klenzoid, Inc., with a price of \$150,000, and appellant Bond Water Technologies, Inc. (Bond), with a price of \$193,987. (Agency Report, Ex. 6.) Prior to making any recommendation for award, UMCP confirmed with Coastline orally and in writing that its price was accurate and that it was able to perform all contract obligations in their entirety at the price stated. (Agency Report, Exs. 7, 8.)
4. Because the lowest priced technically acceptable proposal was the proposal submitted by Coastline, which offered a price \$70,087 lower than Bond, a difference of more than 50%, on or about May 5, 2015, Coastline, not Bond, was recommended for contract award.
5. By e-mail and certified mail on the same day, namely, May 5, 2015, Bond was notified by UMCP that the contract would be awarded to Coastline at the price of \$123,900. (Agency Report, Ex. 9.)
6. Promptly upon learning that it had not been recommended for award, Bond requested to be informed by UMCP of the price offers of all proposals, as a result of which UMCP provided to Bond on May 19, 2015 the Bid Summary Information sheet. (Notice of Appeal, Agency Report, Exs. 6, 13.)
7. Immediately upon receipt of the Bid Summary Information sheet, by e-mail communication to UMCP, Bond questioned the validity of its competitors' pricing, based in part on the wide discrepancy in pricing. That correspondence was

treated by UMCP as a bid protest and on September 2, 2015, Bond was notified that its protest was denied because it was untimely. (Agency Report, Ex. 12.)

8. By correspondence to the Maryland State Board of Contract Appeals (Board) dated September 24, 2015, Bond noted an appeal of UMCP's September 2, 2015 bid protest denial. (Notice of Appeal, Agency Report, Ex. 13.)
9. On or about October 22, 2015, UMCP directed to Bond a second denial of Bond's bid protest. The October 22, 2014 denial addressed the merits of Bond's appeal by explaining that UMCP had specifically confirmed Coastline's pricing before making a recommendation for award. (Agency Report, Ex. 14.)
10. On November 24, 2015 UMCP submitted to the Board its Agency Report. Bond filed no Comments in response to the Agency Report nor any other pleading, and did not retain counsel to represent its interests in this appeal. No hearing was requested.

Decision

UMCP's Procurement Officer was correct in determining that appellant's May 19, 2015 bid protest was untimely. Bond fully understood on May 5, 2015 that the subject contract was recommended for award to a competitor at a sum certain. The University System of Maryland Procurement Policies and Procedures (UPPP) Sec. X(B)(c) provides that "protests shall be filed not later than seven (7) days after the basis for the protest is known or should have been known, whichever is earlier." This provision of UMCP procurement regulation uses the identical language set forth in Sec. 21.10.02.03(b) of the Code of Maryland Regulations (COMAR). Because the seven-day statute of limitations to note a bid protest was triggered by the actual knowledge held by Bond on May 5, 2015, any protest filed after May 12, 2015 is required to be regarded as untimely. The Board

has no discretion to waive this strictly construed requirement and is without authority to address a bid protest that is not timely filed. Therefore the Procurement Officer's determination will not be reversed by the Board.

The Board also notes that COMAR Sec. 21.10.05.03A requires that all corporate parties appearing before the Board must be represented by an attorney licensed to practice law in the State of Maryland. See also NewMarket Enterprises, Ltd. v. DGS, MSBCA 2718, _____ MSBCA ¶ _____ (2010); Affiliated Computer Services, Inc. v. University of Maryland Baltimore, MSBCA 2717, _____ MSBCA ¶ _____ (2010); Pipes & Wires Service, Inc. v. MAA, MSBCA 2709, _____ MSBCA ¶ _____ (2010); Mumsey's Residential Care, Inc. v. DHR, MSBCA 2702, _____ MSBCA ¶ _____ (2010); Okojie Group, Inc. v. DHR, MSBCA 2700, _____ MSBCA ¶ _____ (2010); Visions America Community Development Corp. v. DHR, MSBCA 2701, _____ MSBCA ¶ _____ (2010). It would be sheer speculation for the Board to conclude that appellant knowingly abandoned the instant appeal after receipt of UMCP's October 22, 2015 explanation of the substantive basis of the determination to deny Bond's bid protest, but if appellant had wished to pursue this matter, it was obligated to retain counsel, which was never done.

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

Dated: 12/14/15



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 2952, Appeal of Bond Water Technologies, Inc., under University of Maryland, College Park RFP No. 84910-W.

Dated:

12/14/15



Michael L. Carnahan
Clerk