

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

Appeal of )  
American Powerzone, Inc. )  
 )  
Under ) Docket No. MSBCA 3017  
Maryland Transportation )  
Authority Contract No. )  
FT-2826-000-006R )

**APPEARANCE FOR APPELLANT: None**

**APPEARANCE FOR RESPONDENT: Kimberly A. Millender  
Assistant Attorney General  
Baltimore, Maryland**

**OPINION BY BOARD MEMBER DOORY**

The procurement officer reasonably acted within the discretion provided by law in determining that the appellant was not a responsible bidder.

**Findings of Fact**

1. On June 8, 2016, the Maryland Transportation Authority ("MDTA") issued an Invitation for Bids ("IFB") for Contract No. FT-2826-000-006R ("Contract") on eMaryland Marketplace for the purpose of installing lighting in the fresh air supply ducts at the Fort McHenry Tunnel located in Baltimore City, Maryland. Exhibit 1, IFB.
2. After advertisement, MDTA issued eight (8) Addenda to the original IFB, each of which included an acknowledgment of receipt to be returned to MDTA. Exhibit 2, Addenda 1-8.
3. Addendum No. 4 included final responses to questions received and a replacement Page 240 of the Schedule of

Prices ("SOP"). Page 240 revised the SOP for the approximate quantity required of 1-1/4' Rigid Galvanized Steel ("RGS") Conduit on Line Item Number 8002 from 35,000 to 30,000. American Powerzone, Inc. ("API") acknowledged receipt of Addendum 4 on July 19, 2016, however, it was not clear if API understood this revision.

4. Eight (8) Contract bids were opened on July 28 2016, ranging from \$1,869,523.55 to \$2,927,334.00. MDTA conducted a thorough review of the bids and determined that API was the apparent lowest bidder with a bid amount of \$1,830,047.95, which amount is \$581,589.05, or twenty-four percent (24%), lower than the Engineer's Estimate of \$2,411,637.00.
5. During the evaluation of the bids, several mistakes were noted, including that API failed to include the changed quantity of the RGS conduit from 35,000 to 30,000 which was the subject of Addendum 4. API attached its acknowledgment for Addendum 4 on August 18, 2016 and confirmed that its total bid for the Contract was \$1,830,642.80. The procurement officer determined the errors were mistakes and allowed the process to continue.
6. After confirming its bid on August 18, 2016, API then submitted a "corrected bid" on August 23, 2016, indicating a revised bid amount of \$1,897,562.80. The procurement officer notified API that the revised pricing was not permitted at this stage. API revised unit pricing and total dollar amounts for other Line Items that were not in question. API was given a choice: to stand with its bid as submitted and withdraw the API corrected bid or to withdraw its bid in its entirety.
7. A conference call was requested with API to review the scope of work and to see if specific prices in the bid by API were responsible given API's bid was 24% below the Engineer's Estimate. API was unable to answer all of MDTA's questions

but was given 24 hours to meet this deadline so that API could get "revised pricing" from several vendors. API stated that its pricing was misquoted on several items and asked if substitutions were accepted. API was informed that the IFB did not permit substitutions. API stood firm with its bid; however, API did not provide any information to clarify or justify its bid prices to MDTA.

8. After evaluation and analysis by MDTA regarding API's bid, including direct admission by API that prices for several items were misquoted because API did not understand certain requirements of the IFB, MDTA determined that API could not perform this project. The bid prices submitted by API were much lower than the Engineer's Estimate, other bidders' prices, and current prices, and API admitted that it misquoted the prices for several items. As a result, the procurement officer found API not to be responsible and recommended rejection of its bid.
9. On November 3, 2016, MDTA notified API that it had been determined to be not responsible. On November 8, 2016 API protested to MDTA. On November 23, 2016, MDTA issued a final decision on the protest. On December 7, 2016, API filed its appeal to the Maryland State Board of Contract Appeals

### **Decision**

A procurement officer has a duty to verify before award that a bidder is responsible. If a procurement officer determines that a person is not a responsible bidder or offeror, the procurement officer shall include that determination in the procurement file. COMAR 21.06.01.01B states:

A procurement officer may find that a person is not a responsible bidder or offeror 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.

A procurement officer has discretion and latitude in determining whether or not the bidder has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance. COMAR 21.01.02.01(77). When a procurement officer has reached a determination regarding responsibility based on facts and specified criteria, the Maryland State Board of Contract Appeals ("Board") upholds that decision. Custom Management Corporation, MSBCA 1086, 1090, 1 MSBCA ¶28 (1982).

The procurement officer reasonably rejected the bid because API failed to provide information as to its prices on many occasions and specifically during the conference call. API demonstrated that it failed to understand the specific requirements of the IFB in regard to certain required bid items. API advised MDTA that it stood firm on its bid which did not address MDTA's concerns about the low bid prices. API's low prices for several items were far below the Engineer's Estimate and other bidders' pricing. MDTA was concerned that failure to understand requirements of the work to be performed under the Contract could result in the bidder trying to recoup lost costs later in the project. Thus, MDTA determined that API could not deliver on this project for the prices submitted and found API not responsible. The procurement officer was reasonable in making the determination to reject the bid.

The procurement officer's decision to reject API's bid was not arbitrary, capricious or a violation of law. The determination of whether a bidder is responsible is within the sole purview of the agency, and in the absence of a showing of

bad faith, this Board will not interfere with such determinations. Covington Machine and Welding Co., MSBCA 2051, 5 MSBCA ¶436 (1998). The procurement officer determined that, in light of the continued communications and concern over API's unreasonable bid prices, API lacked the ability to perform the Contract at the bid prices submitted. There is nothing to indicate that this determination was arbitrary or capricious.

The procurement officer acted within the discretion provided by law to determine that API was not a responsible bidder.

The motion to dismiss is hereby GRANTED.

Wherefore it is Ordered this \_\_\_\_\_ day of February, 2017 that the above-captioned appeal is DISMISSED WITH PREJUDICE.

Dated:

\_\_\_\_\_  
Ann Marie Doory  
Board Member

I Concur:

\_\_\_\_\_  
Michael J. Collins  
Chairman

\_\_\_\_\_  
Bethamy N. Beam  
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 3017, Appeal of American Powerzone, Inc. Under Maryland Transportation Authority Contract No. FT-2826-000-006R.

Dated:

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