

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of B & M Supermarket)
)
) Docket No. MSBCA 1766
Under DHMH Refusal to Award)
Contract Under WIC Vendor RFP)
)

January 5, 1994

Competitive Negotiation - Acceptability of Proposal - Where an offeror did not stock the minimum food requirement set forth in the RFP, the offer was correctly rejected as not being reasonably susceptible of award.

APPEARANCE FOR APPELLANT: John D. Shin, Esq.
P.O. Box 6161
Silver Spring, MD

APPEARANCES FOR RESPONDENT: Helen E. Bowlus
Asst. Attorney General
Matthew A. Lawrence
Staff Attorney
Baltimore, MD

OPINION BY MR. PRESS

Appellant appeals from a Department of Health & Mental Hygiene (DHMH) WIC Program Procurement Officer's final decision denying Appellant's protest that it should have been awarded a WIC vendor contract. Appellant did not request a hearing within the required period under COMAR 21.10.07.06 and the Board issues this opinion based on the written record.

Findings of Fact

1. On May 4, 1993, solicitation DHMH DCT 93-1055 for the WIC Program was published in the Maryland Register, and an application packet was sent to the Appellant.
2. The application contained a list of required minimum stock of WIC foods that must be present in the customer area of the store.
3. On June 14, 1993 and again on June 28, 1993, a WIC investigator inspected Appellant's store and found that the Appellant did not have in the customer area of the store the required minimum stock of WIC foods. Based on this Appellant was considered unqualified and its application was rejected.
4. Appellant timely protested this determination and timely

appealed the denial of its bid protest to this Board on October 19, 1993.

Decision

The appeal arises out of Appellant's failure to stock the minimum food requirements set forth in the Request for Proposals (RFP). The Board has previously ruled in several other WIC bid protest appeals on this same issue, that the vendor must meet the minimum requirements of the RFP or have its proposal rejected.

In Reedbird Food Market, MSBCA 1753, 4 MICPEL ¶343, (1993) this Board stated at pps. 4-5,

"This Board has consistently stated that an agency may reject a proposal of an offeror as not being reasonably susceptible of being selected for award where the offeror fails to meet minimum criteria as set forth in the RFP. See Systems Associates, Inc., MSBCA 1257, 2 MICPEL ¶116(1985) at p. 12.

Appellant in submitting its contract application agreed to the terms and conditions of the application packet including evaluation criteria. Section III.C. of the RFP requires that "[T]he offeror must meet the minimum stock requirement" as specified in the Contract Application Packet. We conclude from the record before this Board that Appellant after being offered two opportunities to meet the minimum criteria...failed to comply with minimum food requirements as stated in the RFP and was properly disqualified."

Consistent with this reasoning this Board denied appeals of vendors whose bids were rejected for failure to meet minimum food stock requirements. B & M Supermarket, MSBCA 1758, 4 MICPEL ¶341, (1993) and Parker's Thriftways, MSBCA 1756, 4 MICPEL ¶342, (1993). The Procurement Officer correctly rejected Appellant's offer for failure to meet minimum requirements of the RFP.

Wherefore, it is this 5th day of January, 1994 ORDERED that the appeal is denied.

Dated:

Neal E. Malone
Board Member

I concur:

Robert B. Harrison III
Chairman

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 1766, appeal of B & M Supermarket under DHMH Refusal to Award Contract Under WIC Vendor RFP.

Dated:

Mary F. Priscilla
Recorder

