

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of COACH AND CAR	)	
EQUIPMENT CORPORATION	)	
	)	Docket No. MSBCA 1531
	)	
Under State Railroad	)	
Administration (SRA)	)	
Contract 4099-150	)	

September 7, 1990

Standing - A procurement officer has no authority to expand the definition of an interested party given in COMAR 21.10.02.01 B(1).

A potential subcontractor to a contractor who has been awarded a contract has no standing to file a bid protest.

APPEARANCE FOR APPELLANT: Gene Germaine, C.S.E.  
Elk Grove Village, Illinois

APPEARANCE FOR RESPONDENT: Patricia A. Logan  
Assistant Attorney General  
BWI Airport, Maryland

OPINION BY MR. MALONE

Appellant timely files this appeal from a State Railroad Administration (SRA) procurement officer's final decision denying Appellant's bid protest. This opinion is rendered on the record there having been no request for hearing.

Finding of Fact

On January 19, 1990 the SRA awarded a contract to Sumitomo for the manufacture and delivery of 15 rail passenger coaches and other materials. This was subsequently enlarged for an optional 10 additional cars.

At no time herein was Appellant a bidder or contractor with the SRA under this procurement. Appellant was only a possible subcontractor of Sumitomo for the seats to be installed in the new rail cars.

From January 29, 1990 through May 8, 1990 Sumitomo reviewed proposal from several subcontractors for the seats including the proposal of Appellant. Sumitomo selected another subcontractor for the seats and Appellant protested by letter of July 6, 1990 to SRA. SRA issued a final decision on July 19, 1990 informing Appellant under COMAR only an "interested party" can protest an award of a contract and that a Contract is defined under COMAR 21.01.02.01B (25) as an agreement entered into by a procurement agency and a contractor. Therefore, a possible or actual subcontractor has no standing to protest.

From this final decision Appellant appealed to this Appeals Board on July 30, 1990.

#### Decision

COMAR gives standing to protest only to an "interested party", i.e., a person who is an actual or prospective bidder for a contract with the State. COMAR 21.10.02.01. B(1). The procurement officer has no authority to expand the definition of interested party given in the regulation.

Appellant itself rightfully concludes in its letter to the Appeals Board of July 27, 1990 that it is not able to legally refute SRA's decision to deny the protest for lack of understanding.

Therefore the appeal is denied.