

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

Appeal of MTI )  
Under University of Baltimore ) Docket No MSBCA 1725  
IFB #93-R011087 )

July 7, 1993

Interested Party - The fourth low bidder was not an interested party pursuant to COMAR 21.10.02 because the record did not reflect that it was in line for award (i.e. that the two next low bids had been or would be rejected) in the event its protest that the low bidder could not meet certain of the specifications was upheld.

APPEARANCE FOR APPELLANT: Donald B. Moran  
Regional Representative  
Sterling, VA

APPEARANCE FOR RESPONDENT: Dana A. Reed  
Asst. Attorney General  
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the denial of its bid protest that the low bidder in an evaluated competitive bid could not meet certain of the specifications.

### Findings of Fact

1. The University of Baltimore (UB) issued the captioned IFB for office automating equipment on March 29, 1993 with bid opening scheduled for April 16, 1993. Bids were to be evaluated on the basis of price, warranty and delivery time.
  2. Appellant was the forth low bidder pursuant to the bid evaluation which appears in the record as follows:

## BID EVALUATION

*IEB R011087*

<u>COMPANY</u>	<u>PRICE</u>	<u>WARRANTY</u>	<u>DELIVERY</u>	<u>TOTAL</u>
<u>NAME</u>	<u>(75)</u>	<u>(15)</u>	<u>(10)</u>	<u>POINTS</u>
BERKSHIRE	75	15	9	99
CPU OPTIONS	67	15	10	92
COMPUREX	62	15	8	85
MICRO TECHNOLOGY	50	15	8	73
WINCHESTER	46	15	7	68

The formula for price evaluation was arrived at by dividing

the low bid (12,800.) by the maximum point allowance (75). This value was rounded off to 1.71 and was used to score the difference in price between the low bid and successive bids. All scores are rounded off to the nearest whole number.

All offerors were presumed to meet the warranty requirements.

A deduction of one point was made for each additional week of required time for delivery.

3. The tabulation of bids reflected the following bid prices: Berkshire \$12,800; CPU Options \$17,710; Compurex \$20,500; Appellant (Micro Technology) \$27,575; Winchester \$29,835.
4. Appellant filed a protest by letter dated April 29, 1993 with the UB Procurement Officer alleging that the low bidder Berkshire (Berkshire Computer Products) could not meet certain of the specifications for varying reasons.
5. Upon denial of its bid protest by the UB Procurement Officer, Appellant timely appealed to this Board on May 27, 1993.
6. Neither party requested a hearing.

#### Decision

Appellant was the forth low bidder. Appellant filed a protest challenging the bid of the low bidder, Berkshire. Appellant did not challenge the bids of the next low bidders, CPU Options and Compurex. Accordingly, even if the protest against the Berkshire bid were to be upheld, Appellant would not be awarded the contract unless the bids of CPU Options and Compurex were rejected. Appellant has not challenged these next low bids and there is no evidence in the record reflecting that these next low bids have been or will be rejected.

As this Board observed in Honeywell, Inc., MSBCA 1317, 2 MSBCA ¶148 at P. 8 - "A bidder not eligible for award in the event its protest is upheld does not have standing to challenge award to the apparent low bidder. COMAR 21.10.02. Erik K. Straub, Inc., 1 MSBCA (MICPEL) ¶ 83 (September 11, 1984). See, RGS Enterprises, 1 MSBCA (MICPEL) ¶45 (April 8, 1983)." Footnote omitted. Appellant lacks standing and its appeal must therefore be dismissed.

It is this 7th day of July, 1993, ORDERED that the appeal of Appellant is dismissed with prejudice and the matter is remanded to the University of Baltimore for appropriate action.

Dated: July 7, 1993

Robert B. Harrison III  
Robert B. Harrison III  
Chairman

I concur:

Sheldon H. Press  
Sheldon H. Press  
Board Member

Neal E. Malone  
Neal E. Malone  
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 B4 Time for Filing

a. Within Thirty Days

An order for appeal shall be filed within thirty days from the date of the action appealed from, except that where the agency is by law required to send notice of its action to any person, such order for appeal shall be filed within thirty days from the date such notice is sent, or where by law notice of the action of such agency is required to be received by any person, such order for appeal shall be filed within thirty days from the date of the receipt of such notice.

\* \* \*

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals Decision in MSBCA 1725, appeal of MTI under University of Baltimore IFB #93-R011087.

Dated: 7/7/93

Mary F. Priscilla  
Mary F. Priscilla  
Recorder

