

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
Aircraft Service International	*	
d/b/a Menzies Aviation	*	Docket No. MSBCA 3183
Under MAA	*	
RFP No. MAA-MC-21-008	*	
Appearance for Appellant	*	Joseph D. Edmondson, Jr., Esq.
	*	Julia Di Vito, Esq. (<i>Pro Hoc Vice</i>)
	*	Foley & Lardner, LLP
	*	Washington, D.C.
Appearance for Respondent	*	Douglas G. Carrey-Beaver, Esq.
	*	Gary S. Posner, Esq.
	*	Assistant Attorneys General
	*	Office of the Attorney General
	*	Contract Litigation Unit
	*	Baltimore, Maryland 21202

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PER CURIAM OPINION AND ORDER BY THE BOARD

The Board conducted a merits hearing on this Appeal on February 9, 2022. At the close of all evidence offered by Appellant, Aircraft Service International d/b/a Menzies Aviation (“Menzies”), Respondent, the Maryland Aviation Administration (“MAA”), made an oral motion for judgment on the record pursuant to COMAR 21.10.05.06E. After considering all the admitted exhibits and the arguments made by counsel, the Board unanimously granted Respondent’s motion.

FINDINGS OF FACT AND PROCEDURAL BACKGROUND

In July 2020, Respondent issued Request for Proposals No. MAA-MC-21-008 (the “RFP”) Consolidated Mechanical Systems and Plane Mate Operations, Repair and Maintenance at Baltimore/Washington International Thurgood Marshall (“BWI”) and Martin State Airports for the safe and proper operation and maintenance of the equipment at the Airports, including the

Plane Mates.¹ Appellant is currently the incumbent contractor providing these services. The RFP required that the procurement officer (“PO”) recommend award of the Contract to the offeror whose proposal was determined to be the most advantageous to the State, considering the technical evaluation factors set forth in the RFP, and the price. In making this determination, technical factors were to be given greater weight than price.

Respondent received technical proposals from Appellant and other offerors on October 1, 2020. The Evaluation Committee reviewed those proposals and, on October 16, 2020, Respondent requested a best and final offer (“BAFO”) from each offeror. Appellant submitted its first BAFO on October 23, 2020, the same day Respondent conducted an oral interview with Appellant. Respondent issued a total of four requests for BAFOs.

Although Appellant’s proposal was deemed reasonably susceptible for award, on January 22, 2021, the PO sent a letter to Appellant notifying it that it was not selected for award. On January 28, 2021, Respondent debriefed Appellant via video conference. According to Appellant, Respondent commented on Appellant’s experience, more particularly that it performed maintenance services similar to those sought in the RFP at only two other airports. Respondent expressed concern that Appellant’s management plan was focused more on the strength of its management structure rather than on the staff proposed for this Contract. Finally, Respondent addressed the limited managerial experience of Appellant’s proposed project manager and assistant project manager in managing large operations similar to the one set forth in the RFP.

On February 4, 2021, Appellant filed a timely Protest alleging that the January 22nd letter from Respondent did not explain why it had not been recommended for award and that, at the

¹ Also known as a mobile lounge, a Plane Mate is a passenger transport vehicle that moves passengers from the airport terminal to planes which can adjust its height to match different aircraft.

debriefing, Respondent had not communicated adequate information about the reasons for not recommending Appellant for award. Appellant further asserted that at the debriefing, Respondent had not identified the party that had been recommended for award or the price information, rankings, or scores of the proposed awardee, and that without that information it did not understand where it stood in relation to other qualifying offerors. Appellant claimed its long history working as the incumbent at BWI established its ability to perform the services required at BWI. Finally, Appellant contended that its management team was more qualified than the more senior managers of the other offerors with no experience or expertise working at BWI.

Respondent's PO² denied the Protest on June 25, 2021. On July 6, 2021, Appellant filed its Appeal. At the merits hearing on February 9, 2021, both parties made opening statements. Thereafter, Appellant called no witnesses, and the parties stipulated to the admission of the following eight Joint Exhibits, which were admitted into evidence:

1. Request for Proposals for MAA Contract No. MAA-MC-21-008 MAADOC 000001-000299;
2. Addendum No. 1 MAA DOC 000300-000349;
3. Addendum No. 2 MAA DOC 000350-000353;
4. Aircraft Service International Technical Proposal MAA DOC 000354-000452;
5. Daifuku Elite Line Services Redacted Technical Proposal MAA DOC 000453-000533;
6. MDOT/MAA Non-Select Letter to Aircraft Service International MAA DOC 000534;
7. Bid Protest of Aircraft Service International MAA DOC 000535-000540; and
8. MDOT/MAA Procurement Officer's Decision on Bid Protest of Aircraft Service International MAA DOC 000541-000547.

Appellant then rested its case and submitted to the Board on the Joint Exhibits and the record.

Respondent's counsel then moved for judgment pursuant to COMAR 21.10.05.06E, asserting that Appellant had failed to meet its burden of proof. After hearing Appellant's counsel's response, the Board recessed to deliberate. After the recess, the Board unanimously granted

² Ms. Davis is the PO who made the final agency determination denying the Appellant's Protest. The PO identified in the RFP and to whom the Protest was addressed was Ms. Monica Queen.

Respondent's Motion. The Board further informed the parties that the basis for its decision to grant Respondent's Motion would be forthcoming in a written opinion and that Appellant's time to appeal would run from the issuance of this Opinion and Order.

STANDARD OF REVIEW

A procurement officer's decision will be overturned only if it is shown by a preponderance of the evidence that the agency action was biased, or that the action was arbitrary, capricious, unreasonable, or in violation of law. *Hunt Reporting*, MSBCA No. 2783 (2012).

DECISION

As noted *supra*, Appellant bears the burden of proving that the evaluation of its Technical Proposal was arbitrary, capricious, unreasonable, or in violation of law. In this Appeal, Appellant alleges that its Technical Proposal was not evaluated pursuant to the evaluation criteria set forth in the RFP. In *Eisner Communications, Inc.*, MSBCA Nos. 2438, 2442 & 2445 (2005), the Board explained its role in reviewing the determinations made by evaluators of proposals:

This Board does not constitute a "Procurement Super Evaluation Committee" reviewing in minute detail every aspect of a procurement officer's decision to award a contract. The law in Maryland regarding competitive negotiations is clear. In a procurement by competitive sealed proposal, the process of weighing the technical merits is a subjective one that relies on the business and technical judgment of the Procurement Officer. *Information Control Systems Corp.*, MSBCA 1198, 1 MSBCA ¶ 81 (1984). The evaluation of proposals in a competitive negotiation procurement is a matter left in the Procurement Officer's sole discretion after receiving the advice of an evaluation panel, if one is used. *United Communities Against Poverty, Inc.*, MSBCA 1312, 2 MSBCA ¶ 144 (1987). ... This Board has expressed reluctance to substitute its judgment for that of an agency, in part because it is the procuring agency that will have to "live with the results" of its decision. *Klein's of Aberdeen*, MSBCA 1773, 4 MSBCA ¶ 354 (1994) at p. 7.

Id. at 19-20. Furthermore, the Board has held that mere disagreement with the evaluation of proposals or the recommendation for an award is insufficient to meet an appellant's burden to

show that the evaluation of proposals has been unreasonable. *Id.* at 20 (citing *Delmarva Community Services, Inc.*, MSBCA 2302 (2002) at 5).

Appellant has provided insufficient admissible evidence for the Board to review either the PO's or the Evaluation Committee's determination not to recommend award of the Contract to Appellant. Appellant did not call the PO as a witness to question her regarding how she evaluated Appellant's proposal or how she made her recommendation of award. Additionally, Appellant chose not to file a request for production of documents, as allowed in COMAR 21.10.07.04, seeking copies of the PO's recommendation of award, the Evaluation Committee's recommendation of award to the PO, or the Evaluation Committee's notes on the evaluation of its Technical Proposal. Finally, Appellant provided no evidence of any deficiencies in the debriefing, relying instead on counsel's argument that the debriefing failed to provide Appellant with sufficient information to determine how its proposal compared with other offerors.

Rather than obtaining and relying on relevant admissible evidence to support its allegations, Appellant merely argued before the Board that it disagreed with the PO's evaluation of its Technical Proposal. Oral argument is not admissible evidence. Nothing in the eight Joint Exhibits provides any evidence to support a finding that the PO acted in an arbitrary, capricious, unreasonable or unlawful manner. Appellant is essentially inviting the Board to act as a "super evaluation committee" to re-evaluate its Technical Proposal and the proposed awardee's technical proposal. The Board does not act in such a capacity. Accordingly, the Board denies Appellant's Protest on all grounds because Appellant failed to show that the PO was biased or that her decision was arbitrary, capricious, unreasonable, or unlawful.

ORDER

Based on the foregoing, it is this 16th day of February 2022 hereby:

ORDERED that Respondent's Motion for Judgement is GRANTED; and it is further

ORDERED that a copy of any papers filed by any party in a subsequent action for judicial review or appeal shall be provided to the Board, together with a copy of any court orders issued by the reviewing court.

/s/
Bethamy B. Brinkley, Esq.
Chairman

/s/
Lawrence F. Kreis, Jr., Esq.
Member

/s/
Michael J. Stewart Jr., Esq.

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 contested cases.

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 ten 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 Per Curiam Order and Opinion in MSBCA No. 3183, the Appeal of Aircraft Service International d/b/a Menzies Aviation under MAA RFP No. MAA-MC-21-008.

Dated: February 16, 2022

/s/
Ruth W. Foy
Deputy Clerk