

REESOURCE PEST, INC.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 21-02

ORDER

ReeSource Pest, Inc., (“Appellant”), appeals the August 20, 2020 decision of the Howard County Board of Education (“local board”) to reject all bids for a procurement and re-advertise in accordance with Education Article §5-112(c) of the Maryland Code. Appellant also seeks to appeal the Howard County Public School System’s (“HCPSS”) Purchasing Department’s denial of its bid appeal, however the local board did not render a decision on that issue and it has become moot as set forth below.

The factual background for this matter begins with HCPSS issuing an Invitation for Bid (“IFB”)(Bid #052.20.B3) for Integrated Pest Management Service on May 20, 2020 (Appeal, Ex. A). The relevant portions of the IFB provided as follows:

LICENSES AND QUALIFICATIONS 1. Bidders, or the principal employees of the company bidding, shall have a minimum of five (5) years successful experience in providing the pest, bird, and termite control services described in this document and have an local office within (50) miles of the HCPSS. . . .
(Appeal, Ex. A, p. 4).

PROFILE OF COMPANY FORM: Complete the "Profile of Company" form provided. Information provided is to be of a local office within 50 miles of the HCPSS that will be performing the Howard County Public School System's work. By completing the form, a comprehensive description of your organization will be provided which includes the following information: a) Location and size of firm. b) Brief history of your firm including; (1) Length of time in IPM service business (minimum of 5 years' experience required) (2) Principals of the company (3) Number of employees by job categories (4) Annual Dollar of Sales by year for the last three (3) years. c) Certify whether or not your firm has, in the last five (5) years, had a contract terminated for any reason and if so state why.
(Appeal, Ex. A, p.10).

Appellant submitted its bid with documentation that stated that it had been in business for one (1) year, and that employees who would be performing the work had worked for ReeSource Pest, Inc. anywhere from 1 month to 1 year. (Appeal, Ex. B).

On July 8, 2020, the following series of events occurred:

1. The HCPSS Purchasing Department notified Appellant that it did not meet the requirement specified in the IFB that the bidder have five years of experience and its employees have five years of work experience with the company. (Motion Ex. 1).
2. Appellant filed a bid protest regarding its disqualification. (Motion Ex. 2).
3. The Procurement Specialist within the Purchasing Department notified Appellant that its protest was denied based upon Appellant's statement that it had only operated its pest management business for one (1) year as ReeSource Pest, Inc. (Motion Ex. 3).
4. Appellant filed an appeal of the bid protest denial to HCPSS Purchasing Director, Douglas Pindell. (Motion Ex. 4).
5. Mr. Pindell denied Appellant's appeal citing that Appellant was not the lowest bidder on the IFB and failed to satisfy the 5-year experience requirement. (Motion Ex. 5).
6. Appellant filed an appeal to the HCPSS Chief Operating Officer, Scott Washington. (Motion Ex. 6).

On July 8th, the board withdrew the bid issue from the board meeting agenda in order to address the bid protest appeal. On July 28, 2020, Mr. Washington and Mr. Pindell met with Appellant to review the bid protest. At the August 18, 2020 meeting, the local board voted to reject all bids received under the May 20, 2020 IFB. (Motion Exs. 7 and 8).

On September 23, 2020, prior to resolution of the appeal before the local board, Appellant filed its appeal to the State Board. Appellant amended the appeal on October 7, 2020. On October 12, 2020, HCPSS re-issued the bid, and provided notice to Appellant inviting it to submit another bid. (Motion Ex. 10). The local board filed a Motion to Dismiss Appellant's appeal arguing that (1) the local board did not issue a final decision on the bid protest; (2) the bid protest appeal was rendered moot by the reissuance of the bid, and; (3) an appeal based on the board's August 18, 2020 rejection of the bids was untimely because Appellant did not appeal that decision to the State Board within the thirty (30) days proscribed by COMAR 13A.01.05.02B.

The facts and timing sequence of this matter are unique in that, depending on which of Appellant's arguments are being considered, the instant appeal is both premature and untimely, as well as moot. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Harvest Foundation Group v. Baltimore County Bd. of Educ.*, MSBE Order No. OR19-11 (2019); *Lakesha W. v. Howard County Bd. of Educ.* MSBE OR 08-12 (2008). In the present matter, the local board did not render a decision as to the merits of Mr. Washington's denial of Appellant's bid protest appeal. Because the local board has not issued a final decision in the Appellant's case, there is nothing for the State Board to review.

The local board's action on August 20, 2020, rejecting all bids and opting to re-issue the bid pursuant to Md. Code Ann., Educ. Art. §5-112(c)(2), terminated any controversy at issue related to the initial bid process.¹ See *Beth B. v. Calvert County Bd. of Educ.*, MSBE Op. 20-35 (2020), *Aaron R. v. Montgomery Co. Bd. of Educ.*, MSBE Op. 20-22 (2020). Furthermore, Appellant's appeal filed on September 23, 2020 failed to comply with the thirty (30) day filing requirement for State Board appeals. See *Wrublewski v. Charles Co. Bd. of Educ.*, MSBE Op. 18-13 (2018).

Pursuant to Education Art. § 4-205(c)(3) and COMAR 13A.01.05.03B(1)(a), (b), and (e), the State Board may dismiss an appeal if a final decision had not yet been rendered by the local board, if the issue is moot, or if not timely filed.

Therefore, it is this 23rd day of February, 2021, by the Maryland State Board of Education, ORDERED, that the appeal is dismissed pursuant to COMAR 13A.01.05.03B(1)(a), (b), and (e).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Jean C. Halle
Vice-President

¹ Although we do not reach the merits of the appeal, we note that Education Art. §5-112(c) provides that "The county board may reject any and all bids and re-advertise for other bids," which is exactly what the local board did in this matter.