

LIBERTY ELEVATOR
EXPERTS, L.L.C.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 20-22

ORDER

Liberty Elevator Experts, L.L.C., (“Appellant”), appeals the August 7, 2020 decision of the Acting Director of the school system’s Department of Purchasing and Supply Services (“Purchasing Office”) to deny its protest contesting the contract awards to two other firms in addition to the Appellant. There is no local board decision in this case.

On November 20, 2019, the Prince George’s County Public Schools (“PGCPS”) issued Invitation for Bid (“IFB”) 019-20, “Third Party Qualified Elevator Inspection Services for Conveyance Systems” requesting vendors who were interested in providing inspection, repair, and maintenance services for elevators at PGCPS facilities. (Motion, Ex. 2). The IFB was for a Non-Exclusive use contract. The IFB at Appendix A, Section 8: “Special Terms and Conditions for Sealed Bids,” Subsections m-n: “Right to Protest” and “Appeal of Contract Award Decision” provides:

A protest must be filed with the Purchasing Office within five (5) calendar days of the recommendation of the award or notification of the bidder or offeror that their bid or proposal will be rejected.

The Director of Purchasing shall issue a decision in writing. Any decision of a bid award protest may be appealed to the CFO¹ within two (2) days of issuance of the decision by the Director of Purchasing...Any decision of a bid award protest may be appealed to the Board of Education² within thirty (30) days of issuance of the decision of the CFO...A vendor who remains unsatisfied after following the procedures may contest a contract awarded by the Board by

¹ Prince George’s County Public Schools Chief Financial Officer.

² Prince George’s County Board of Education.

filing an appeal to the Maryland State Board of Education as provided by Maryland's public school law.

On December 20, 2019, PGCPS received three bid responses to IFB 019-20. On February 6, 2020, PGCPS issued a Notice of Contract Award ("NOA") to three bidders, including the Appellant. (Motion, Ex. 3). The Purchasing Office received the NOA signed by the Appellant on February 11, 2020. PGCPS executed the NOA on February 14, 2020. (Motion, Ex. B).

On June 29, 2020, more than four months after the NOA was signed by the parties, Appellant sent an email to the Purchasing Office notifying it that the Appellant intended to contest the award of IFB 019-20 as it was "not notified until [June 26, 2020] that the entire award was not given to [Appellant]." (Motion, Ex. G). On June 30, 2020, the Appellant submitted a formal protest of award for IFB 019-20 to the Purchasing Office arguing that it believed that the entire portfolio of elevator inspections for the PGCPS would be awarded to it and that it had not been informed that the award would be split among three service providers. (Motion, Exs. H & I).

In correspondence dated August 7, 2020, Johnna Smarr, Acting Director of the Purchasing Office, denied Appellant's bid protest after determining that the protest was untimely filed. (Motion, Ex, K). Appellant did not appeal Ms. Smarr's decision to the CFO or the Prince George's County Board of Education ("local board").

On August 19, 2020, Appellant filed its appeal to the State Board. The local board filed a Motion to Dismiss Appellant's appeal arguing that Appellant failed to exhaust its administrative remedies and prematurely filed its appeal to the State Board.

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). Because the local board has not issued a final decision in the Appellant's case, there is nothing for the State Board to review.

Pursuant to Education Art. § 4-205(c)(3) and COMAR 13A.01.05.03B(1)(a), the State Board may dismiss an appeal if the local board has not issued a final decision. *See Victor and Sandra B. v. Anne Arundel County Bd. of Educ.*, MSBE Order No. OR20-11 (2020). Here, the Appellant prematurely filed its appeal to the State Board where there was no decision for the State Board to review.

Therefore, it is this 8th day of December, 2020, by the Maryland State Board of Education, ORDERED, that the appeal is dismissed for failure to exhaust administrative remedies.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Clarence C. Crawford
President