

AUTOFLEX FLEET, INC.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION
(II)

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 23-07

ORDER

Appellant challenges the decision of the Montgomery County Board of Education (“local board”), made at its August 23, 2022 meeting, to approve the emergency procurement of 64 Thomas Built diesel buses used to transport students with disabilities. The local board argues that the Appellant lacks standing to challenge the procurement because the Appellant, a contractor that does not provide diesel buses, is not an interested party.

We agree the Appellant lacks standing. The Maryland Supreme Court has held that public school procurement of bus services is a matter of local concern, controlled by local policy and regulations, and is not subject to the General Procurement Law codified in the State Finance and Procurement Article of the Maryland Code. *Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ.*, 358 Md. 129 (2000). The MCPS Procurement Manual defines an “interested party” as “an actual or prospective bidder, offeror, or contractor.” (R. at 000047). The MCPS procurement staff denied Appellant’s protest at every stage of the appeal at the local level because they concluded that the Appellant was not an interested party as defined by the MCPS Procurement Manual, and thereby lacked standing.

We agree with this conclusion and it is consistent with our well established precedent regarding standing. In order to have standing, an individual “must show some direct interest or ‘injury in fact, economic or otherwise.’” *Milstein v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-25 (2015)(quoting *Nehemiah’s Vision, Inc. v. Bd. of Educ. of Prince George’s County*, MSBE Op. No. 14-30 (2014)). In other words, a person must “be personally and specifically affected in a way different from the public generally.” *Id.* An individual’s status as a member of the community is insufficient to convey standing by itself. *Id.* (citing *Marshall v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 03-38 (2003)). As an electric bus supplier, Appellant lacks any direct interest or injury in fact as it relates to the procurement of diesel buses.

Appellant argues that it has standing because it was a bidder “in the directly related electric school bus 4-year contract that is currently under appeal.” Appellant’s Opposition at p. 9. We disagree. In the earlier appeal where Appellant was a bidder, we denied Appellant’s appeal of the award of the local board’s comprehensive bus electrification program to a competitor under a 2020 Request for Proposal. *See Autoflex Fleet, Inc. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 21-40 (2021). Our decision was affirmed by the Circuit Court for

Montgomery County and is currently on appeal to the Maryland Court of Appeals. In essence, here Appellant opposes the local board's policy decision to purchase diesel buses instead of electric buses. Appellant's disagreement with the local board's policy does not equate to being "an interested party" to confer standing to challenge the procurement.

Through this appeal, Appellant attempts to relitigate the matters regarding the procurement of electric school buses; but this matter only pertains to the diesel bus procurement. The Appellant is not an authorized diesel bus vendor approved directly by Thomas Built manufacturing company in accordance with their geographical terms and conditions and standards for school vehicles manufactured for sale in Maryland. Accordingly, Appellant cannot establish that it has standing in this procurement matter as an interested party.

Therefore, it is this 28th day of March 2023, by the Maryland State Board of Education,

ORDERED, that Appellant's challenge of the local board's emergency procurement is hereby dismissed for lack of standing. *See* COMAR 13A.01.05.03B.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Clarence C. Crawford
President