

ALLIED TRANSPORTATION,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-30

OPINION

INTRODUCTION

The Appellant, Allied Transportation, Inc. (“Allied”) challenges the decision of the Anne Arundel County Board of Education (local board) rejecting Allied’s bid to provide taxicab transportation services for special needs students. The local board filed a Motion for Summary Affirmance. The Appellant has filed an Answer to that Motion.

FACTUAL BACKGROUND

In September 2006, the Anne Arundel County Public School System issued a Request for Bids for taxicab transportation service for special needs students. (T. 17-28). Because there were errors in that solicitation, the school system issued a revised Request for Bids, December 2006. (T. 18-21). Three bidders responded. Allied Transportation, Inc. was one of them. (Local Board, Ex. 5). After reviewing all the bids, the Buyer in charge of the solicitation rejected Allied’s bid because (1) Allied had insufficient years of experience; (2) it held no taxicab license in Anne Arundel County; (3) the references submitted could not be contacted or were inadequate; and (4) no audited financial statement was submitted. (T. 21-21 and Local Board, Ex. 6).

Allied Transportation, Inc. filed a protest with the Purchasing Officer, Deborah Groat, who denied the protest. (Local Board, Ex. 7). As Ms. Groat pointed out in her decision, Allied Transportation, Inc. was not licensed in Anne Arundel County to provide taxicab services. Another corporate entity related to Allied Transportation, Inc. had one taxicab license in Anne Arundel County. That company (Allied Leasing, Inc.), however, was not the vendor that submitted the bid.

Ms. Groat also noted that Allied did not appear to have the requisite two years of experience in providing transportation services for students with special needs, and that one of the references Allied provided said they were not satisfied with the company. (Local Board, Ex.

8). Allied appealed the denial of its protest to the superintendent, explaining that it had over 15 years of experience, that it was planning to get fifty cabs licensed in Anne Arundel County and that it was the lowest bidder. Allied also questioned the process that the school system used in accepting and rejecting the bids. (Local Board, Ex. 9).

The superintendent's designee upheld the decisions rejecting the bid and denying the protest, concluding that the process was proper and that Allied's bid did not include all the documents and information required. (Local Board, Ex. 10). Thereafter, Allied appealed that decision to the local board. (Local Board, Ex. 11).

On June 28, 2007, the local board held an evidentiary hearing on the matter. At the hearing, Allied argued that the problems in its bid were minor ones that should not have led to rejection of the bid, particularly in the light of a savings of half a million dollars to the school system, if Allied provided the services. (T. 13-15).

Mr. Gill, the owner of Allied Transportation, Inc. testified about the corporate structure. "Allied Transportation is the mother corporation and then there are . . . a total of 47 different companies under [it]," one of which is Allied Leasing which would own the taxicabs. (T. 68-69). Allied Leasing had one taxicab registered in Anne Arundel County, he explained, with 20 more ready to be registered. (T. 69-70). He also stated that he could shift ownership of the cabs from Allied Leasing to Allied Transportation and re-register the cabs under the Allied Transportation name in order to overcome that reason for rejecting the bid. (T. 72). Mr. Gill also testified that, although the corporate papers were not in order at the time of the bid submission, they were in order now. (T. 72-73). Moreover, he explained that Allied Transportation, Inc. had changed the debt owed to him from a short-term to a long term debt, thus, improving the debt ratio of Allied Transportation. (T. 74).

In addition, Mr. Gill challenged the negative comments from the Baltimore City Public School System about Allied's service and disavowed them as a reference. (T. 75-76). Finally, he testified in detail that his bid was by far the lowest bid and that, to him, the successful bidder's bid was very high and confusing. (T. 79).

On August 15, 2008, the local board issued its decision. It noted that under Education Article § 5-112, school system contracts "shall be awarded to the lowest responsible bidder" Local Board Administrative Regulation DEB-RA defines "responsible" as "a person or entity which has the capability in all respects to perform fully the contract requirements and the integrity, ability, reliability, and proven record of performance, in the sole discretion of the Supervisor of Purchasing, to assure acceptable performance." The local board found that "Allied Transportation's lack of a taxicab license in Anne Arundel County [was] dispositive of this appeal." (See, Local Board's Memorandum of Opinion and Order, attached to Appeal). Thus, Allied Transportation was not a "responsible" bidder at the time it submitted its bid.

This appeal ensued.

STANDARD OF REVIEW

In this appeal, the local board's decision is considered *prima facie* correct. This Board will not disturb that decision unless the Appellant shows that the local board's decision was arbitrary, unreasonable or illegal. COMAR 13A.01.05.05.

LEGAL ANALYSIS

Allied Transportation's appeal lists a multitude of issues. We have grouped them into two categories. First, Allied alleges unfairness in the process by challenging the withdrawal of the first Request For Bids (RFB) and the issuances of a second RFB and by asserting that the winning bid was deficient and the winning bidder unfairly favored over Allied. Second, Allied focuses on its own bid and asserts that the local board should have allowed Allied to correct the problems in its bid because they were minor ones, and because its bid was the lowest.

A. The Bid Process

Allied Transportation alleges that the bid process was unfair and favored the winning bidder by stating in its appeal:

- That BOARD's purchasing officials testified that they did not even consider the amount of the first bids before reissuing which is hard to take as credible.
- That the second solicitation was handled in primarily the same manner with the same results as the first, except that a third reissuance was not made, i.e., ALLIED was the lowest bidder by far and the highest bidder was selected to the cost of over one million dollars, COST PLUS, to the taxpayers.
- That the primary reasons that BOARD gave for denying the appeal were that officially the bid was in the name of an affiliated corporation as ALLIED and that the financial report issued was unaudited as was the winning bidder's to the best of ALLIED's knowledge, at least at first anyway.
- That the BOARD abused their power and discretion in re-issuing a bid for "corrections" in transparent action, which favored the winning bidder to the disadvantage of the ALLIED.
- That the BOARD abused their power and discretion in the handling of the second issuance of the solicitation, by demanding a much stricter standard of compliance with

rules and their technicalities from ALLIED as with winning bidder.

- That the BOARD, by and through its purchasing arm, continued to abuse its discretion and power by giving preferential treatment to the existing contractor/bidder; that it continued to do so by a wide margin throughout the first appeal level, using technicalities and an abuse of their power to make “evaluated” decisions as reasons while wholesally overlooking requirements when it came to the winning bidder.
- That the winning bidder deviated from exact requirements of bidding as much or more as ALLIED.
- That un-refuted testimony in the first appeal of these actions showed that the winning bidder and existing contractor was too small to take the new bid, which was unimpeached evidence on appeal.

The Appellant provides no citation to the record or the transcript to support those assertions. We have reviewed the record and the testimony given in this case and have deduced no apparent unfairness in the process or favoritism to the winning bidder.

Ms. Groat explained the reason for withdrawing the first RFB because it contained a significant calculation error which might have misled some potential bidders into thinking they were capable of responding when they were not, or misled other potential bidders to believe the contract would not be big enough to interest them. (T. 17-18, 45-47). We agree with Ms. Groat that that type of error effects the scope of the contract and, in fairness to all, requires a new solicitation.

Issuing a new solicitation was not inherently unfair to Allied. It bid anew for the contract and its bid was evaluated anew. Again and again, however, Allied alleges that the evaluation and evaluators favored the winning bidder. Yet, Allied was not prepared to prove that when it appeared at the hearing. This colloquy reflects that.

MR. MILLER: Part of the concern of my client is that they feel that the way that Associated was evaluated was on a different way and a different level than the way that Allied was, Associated.

They basically feel that their bid and their offer was picked apart and Associated was rubber-stamped. That’s the feeling. Probably because of experience.

CHAIRMAN LEAHY: Do you have any documentation that - -

MR. MILLER: No, I , all of that documentation would be in their hands, hands of the Purchasing Department. I do not have Associated's records and I don't have the Purchasing Department's records. And we have not way of - -

CHAIRMAN LEAHY: Well - -

MR. MILLER: No way of cross examining what happened. I'm still concerned about the difference in prices. It's quite a lot . . .

(T. 65).

Counsel did, of course, have an opportunity to cross examine Ms. Groat. He did not ask any question about the winning bid or bidder. (T. 30-36).

Mr. Gill, owner of Allied Transportation, testified about irregularities in the winning bid claiming that the bid "was a mess." (T. 77). He said:

GILL: So I went with that rate so, which was, that made me presume that I'm the lowest bidder. And comparatively to Associated Cab, which they had put in a 24,000.

If you could please see all of this page number 38? I don't know. And 24,000, and for the missed call they have for the 12 hundred and 50 dollars. This is for - -

Q. What you're trying to tell them, there are irregularities?

A. There's no, there's more than irregularities.

And I came down here and I saw my, saw this recommendation on the screen back there and I was; like, all, you know, I'm like - - and so Associated Cab \$4.00. I'm just, kind of, wondering how from 24,000, 24 hundred for the first mile to \$4.00 a mile came from. And which was totally out of whack.

(T. 78-79).

It may well be that the winning bid contained those numbers, but the numbers apparently were converted to per mile costs for presentation to the local board.

We find no evidence of favoritism or unfairness in the evaluation process.

B. Sufficiency of Allied's Bid

Allied asserts that its bid was the lowest bid and should have been accepted despite minor problems. The local board did not view the deficiencies in the bid as minor and we do not second guess the local board's determination on that issue. In fact, we agree with it. Allied may have been the lowest bidder, but as set forth in the Factual Background, its bid did not include complete information and most importantly, Allied was not licensed in Anne Arundel County. The local board concluded, therefore, that was not a "responsible" bidder.

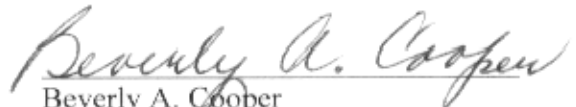
We believe a reasoning mind could have reached that decision based on the evidence. Allied has not demonstrated by a preponderance of the evidence that that decision was arbitrary, unreasonable or illegal.

CONCLUSION

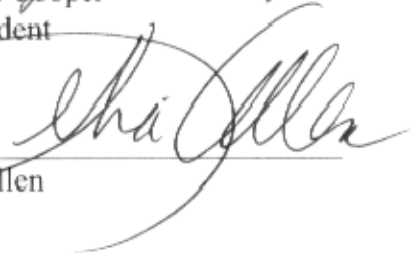
For all of these reasons, we affirm the decision of the local board.



Dunbar Brooks
President



Beverly A. Cooper
Vice President



Lelia T. Allen

absent

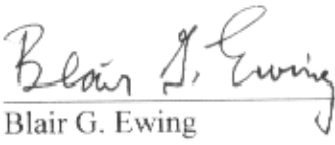
J. Henry Butta

absent

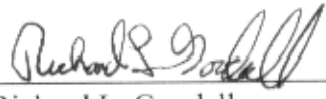
Charlene M. Dukes




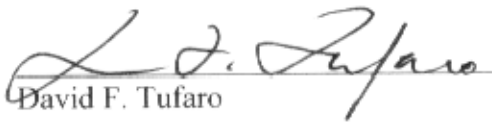
Mary Kay Finan


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June 25, 2008