

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

MUSTANG DYNAMOMETER	)	
	)	CAB No. P-0655
Under Invitation No. 01-0121-AA-2-0-KA	)	

For the Protester: Mr. David Ganzhorn, *pro se*. For the Government: Howard Schwartz, Esq., Assistant Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Matthew S. Watson, concurring.

**OPINION**

*CourtLink Filing ID 829610*

Mustang Dynamometer, a subcontractor of Engineering Management Services, Inc. (“EMSI”) who was the apparent low bidder in the Department of Public Works’ procurement for renovation of the Northeast Vehicle Inspection Station, protests the contracting officer’s determination that Mustang is not a responsible subcontractor. Because EMSI did not replace Mustang with another subcontractor, the contracting officer determined EMSI to be nonresponsible and awarded the contract to H.R. General Maintenance Corporation. The District has moved to dismiss the protest on the ground that Mustang, as a subcontractor, lacks standing to protest any award. Mustang has not responded to the motion. We agree with the District that Mustang lacks standing and therefore we dismiss the protest.

**BACKGROUND**

On August 2, 2001, the Department of Public Works (“DPW”) issued IFB No. 01-0121-AA-2-0-KA for renovation of the Northeast Vehicle Inspection Station for the Department of Motor Vehicles. (District’s Motion to Dismiss, Ex. 1). The renovation included installing five vehicle inspection lanes with completely installed and operating vehicle emissions inspection systems. (Ex. 1). On September 26, 2001, DPW opened bids from the following six bidders: EMSI, H.R. General, Keystone Plus Construction, Capitol Technology Services, Inc., Smoot Construction Company of Washington, D.C., and Maryland Construction, Inc. (Ex. 2). EMSI was the apparent low bidder with a bid of \$5,936,000, of which \$2,500,000 represented the amount for equipment. (Ex. 2) EMSI selected Mustang as its subcontractor to supply the testing equipment. (Motion to Dismiss, at 2). By letter to EMSI dated March 28, 2002, DPW rejected Mustang as a subcontractor due to its unsatisfactory record of past performance and advised EMSI that EMSI also would be found nonresponsible unless EMSI replaced Mustang with a responsible subcontractor. (Ex. 3; Motion, at 2). Because EMSI failed to submit a replacement subcontractor to DPW, the contracting officer approved a determination on April 17, 2002, finding EMSI nonresponsible on the basis that its subcontractor, Mustang, was nonresponsible. (Ex. 3). The determination provides in pertinent part:

The portion of the contract to be performed by this subcontractor is a critical element of this project. This proposed subcontractor, Mustang Dynamometer, has recently performed work for the District and has established an unsatisfactory performance record. This history of poor performance covers an extended period of time and is well documented by the District Department of Motor Vehicles . . . .

(Ex. 3). On May 16, 2002, Mustang filed its 1-page protest challenging the award to H.R. General, claiming that the award was based on false and inaccurate statements, and that DPW erred in determining Mustang to be a nonresponsible subcontractor. EMSI, the prime contract bidder, has not protested the award and its being determined nonresponsible. Mustang has not responded to the District's motion to dismiss.

### DISCUSSION

It is well-settled that a subcontractor, vendor, or supplier of a prime contract bidder does not have standing to protest a contract award. *MADVAC International, Inc.*, CAB No. P-0595, Nov. 18, 1999, 48 D.C. Reg. 1449, 1450; *Remco Business Systems, Inc.*, CAB No. P-0131, Dec. 30, 1988, 36 D.C. Reg. 4016, 4017. Because Mustang was not a bidder, but a subcontractor of one of the bidders, it does not have standing to challenge the award to H.R. General or the underlying nonresponsibility determination of itself or EMSI.

Accordingly, we dismiss Mustang's protest for lack of standing.

### SO ORDERED.

DATED: July 30, 2002

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Administrative Judge

CONCURRING:

/s/ Lorilyn E. Simkins  
LORILYN E. SIMKINS  
Chief Administrative Judge

/s/ Matthew S. Watson  
MATTHEW S. WATSON  
Administrative Judge