

**STATE OF MARYLAND
BOARD OF CONTRACT APPEALS
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**SUMMARY ABSTRACT
DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS**

Docket No. 2310	Date of Decision: 12/31/02
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under Maryland Port Administration Contract No. 502906	
Appellant/Respondent: Wacor Electronic Systems Maryland Port Administration	

Decision Summary:

Bid Protest - Timeliness - A protest must be filed within seven (7) days after the basis for the protest is known or should have been known, and as noted in the Board's earlier decision involving this procurement, a protest based upon alleged improprieties in a solicitation that are apparent before bid opening must be filed prior to bid opening.

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**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In The Appeal of Wacor)
Electronic Systems)
)
Under Maryland Port)
Administration Contract)
No. 502906)

Docket No. MSBCA 2310

APPEARANCE FOR APPELLANT: Robert Fulton Dashiell, Esq.
Baltimore, MD

APPEARANCE FOR RESPONDENT: Robert L. Munroe
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Baltimore, MD

APPEARANCE FOR INTERESTED PARTY: Stephen J. Nolan, Esq.
NetVersant Solutions - Nolan, Plumhoff & Williams Chartered
Chesapeake, Inc. (NetVersant) Towson, MD

OPINION BY BOARD MEMBER HARRISON

This appeal arises from the Maryland Port Administration’s (MPA) final decision denying Appellant’s second protest related to MPA’s application of a quality assurance specification set forth in the MPA’s Invitation for Bids (IFB) for building security systems improvements to the World Trade Center located in Baltimore, Maryland. The quality assurance specification at issue required bidders to submit with their bids references demonstrating that they had successfully installed three (3) access control systems projects involving 200 card readers over the past five (5) years (hereinafter referred to as the “card reader requirement”).¹ The first appeal (MSBCA 2295) was dismissed by the Board by Memorandum Opinion dated September 3, 2002 on grounds that the protest was not timely filed. The Memorandum Opinion is attached hereto as Exhibit A and is incorporated herein by reference. Appellant’s second protest, and the subject of the appeal herein, alleges wrongdoing through

¹A card reader is a device used to read access control key cards and transmit the data to the Intelligent Field Panel, which then processes the data from the card reader to grant or deny access.

disparity in MPA's application of the card reader requirement and error in its application to the Interested Party, NetVersant Solutions - Chesapeake, Inc. (NetVersant). Appellant's second protest also challenges MPA's determination that Appellant submitted an illegal bid in violation of the Maryland Security Systems Technicians Act (MSSTA), *Md. Code Ann., §18-101, et. seq. of the Business Occupations and Professions Article.*

As further discussed below this appeal will be denied because: (1) Appellant did, in fact, submit a bid that could not be considered because Appellant was not licensed in accordance with the MSSTA, thereby making its bid void as a matter of law; (2) the bid protest related to the MPA's alleged wrongful application of the card reader requirement was not timely filed; and (3) MPA lawfully applied the card reader requirement to Appellant and to the apparent successful bidder, the Interested Party, NetVersant.²

Findings of Fact

1. On January 22, 2002, MPA issued the IFB for the above captioned Contract for various building security systems improvements to the World Trade Center.
2. On February 26, 2002, MPA issued Addendum No. 2, which made certain changes to the specifications in the IFB, and which extended the Bid Due Date to March 12, 2002. For purposes of this appeal, the pertinent change to the IFB as set forth in Addendum No. 2 related to the installation of the building access control system. This change in the technical specifications portion of the IFB required each bidder to:

Submit the names of at least three (3) access control system installation projects completed within the last five (5) years. The projects must include the installation of at least 200 card

²While the Board has determined that it lacks jurisdiction over the appeal because the protest was not timely filed and has also determined that Appellant lacked standing to protest, the Board will discuss the merits of the protest notwithstanding that the Board's comments may be viewed as *dicta*.

readers and must have been installed by the Contractor with the same company name bidding this project. List shall include contact names and phone numbers.

3. On March 12, 2002, MPA opened the bids. MPA received a total of ten (10) bids.³ At the time of bid opening, Appellant was the apparent low bidder. NetVersant, the Interested Party, was fifth lowest bidder.
4. Shortly after the bid opening, MPA requested that its design consultant, Parsons Brinckerhoff (PB), review the bids and make a recommendation for award. Part of PB's evaluation of the bids included an examination of bid responsiveness and bidder responsibility.
5. On March 27, 2002, PB made its recommendation for award of the bid to NetVersant. PB's evaluation determined that none of the four (4) contractors who submitted bids lower than that of NetVersant met the requirements of the specifications.
6. With respect to Appellant, PB's recommendation noted that:

[Wacor] submitted the lowest bid. We have spoken with all of the contacts for the projects listed. Of the three access control projects listed, only one involved at least 200 card readers; but that project does not meet the intent of the specification. The original project did not include the installation of at least 200 card readers. Instead the original system has been expanded over the last three years to include additional card readers at two additional buildings on the same campus. Currently the entire system includes more than 200 card readers.
7. After reviewing PB's recommendation, MPA decided to reject Appellant's bid. The basis for this rejection was PB's determination that Appellant failed to meet the specification requiring it to demonstrate that it had successfully installed three

³In addition to Appellant's bid, MPA received bids from VSE Corporation, ADT Security Services, Inc., the Interested Party, Electronic Technologies Corporation, Enterprise Electric Company, Tech, Inc., SPC, Inc., Siemens Building Technologies, Inc., and Johnston Controls.

- (3) access control systems projects involving 200 card readers over the past five (5) years, i.e. the card reader requirement.
8. Shortly after MPA rejected Appellant's bid, MPA learned that Appellant was not licensed as a security systems agency in accordance with the MSSTA.
 9. On May 23, 2002, Appellant sent a letter to MPA protesting MPA's rejection of its bid. In the protest, Appellant objected to MPA's inclusion of the card reader requirement on the grounds that 200 readers is not a valid guideline to judge a company's experience and qualifications, and that it unfairly limited competition by favoring large firms over small firms. By letter dated June 18, 2002, MPA denied the protest, in part, on the grounds that: (1) Appellant's bid protest was not timely filed in accordance with the Code of Maryland Regulations (COMAR) 21.10.02.03, which mandates that protests based on improprieties in a solicitation that are apparent before bid opening must be filed before bid opening; and (2) Appellant submitted an illegal bid in violation of the MSSTA. MPA also denied the protest on the merits.
 10. On July 1, 2002, Appellant appealed the Procurement Officer's decision to this Board, and the Board docketed the appeal as MSBCA 2295. MPA moved to dismiss the appeal, asserting that Appellant's bid was not timely filed and that it submitted an illegal bid.
 11. A hearing on the motion was held before the Board on August 30, 2002. On September 3, 2002, the Board issued a Memorandum Opinion (attached hereto as Exhibit A) dismissing Appellant's appeal for failure to timely file its protest.
 12. On September 3, 2002, as supplemented by letter dated September 13, 2002, Appellant filed its second bid protest related to the card reader requirement. In this protest, Appellant challenged MPA's application of the card reader requirement to Appellant and to NetVersant, maintaining that MPA: (1) did not apply the card reader requirement evenly as between Appellant and NetVersant; and (2) erroneously found NetVersant to have demonstrated satisfaction of

the card reader requirement in its bid. Appellant also challenged MPA's finding that Appellant submitted an illegal bid. MPA denied the protest on October 8, 2002.

13. The basis for MPA's denial of the protest was threefold. First, it denied the protest on grounds Appellant submitted an illegal bid in contravention of the MSSTA and, thereby, could not be awarded the Contract irrespective of the merits of its allegations. Second, MPA found that Appellant's bid protest was not timely filed in accordance with COMAR 21.10.02.03B, which mandates that protest shall be filed within seven (7) days after the basis for the protest is known or should have been known, whichever is earlier. Third, MPA denied the protest on the grounds that the card reader requirement was a valid quality assurance requirement reasonably related to the needs of MPA and that it was applied in a lawful manner.
14. From the denial of its protest Appellant timely appealed to this Board on October 18, 2002.

Decision

Contemporaneously with its Agency Report, MPA filed a Motion To Dismiss Or In The Alternative For Summary Disposition (Motion) of this appeal on grounds Appellant was not licensed under the MSSTA to perform the required services at the time it submitted its bid, and, therefore, its bid could not be considered, and on grounds (alternatively) that Appellant's protest was not timely filed. The Board entertained the Motion at the hearing of the appeal on December 18, 2002 and determined to take the Motion under advisement pending hearing the merits of the appeal. For the reasons that follow, the Board will grant the Motion and dismiss the appeal.

We find that Appellant was not licensed as a security systems agency in accordance with the Maryland Security Systems Technicians Act (MSSTA), *Md. Code Ann., §18-101, et. seq. of the Business Occupations and*

Professions Article at the time it submitted its bid.⁴ The MSSTA prohibits a corporation from engaging, attempting to engage, or offering to engage, in a business of providing security systems services in the State unless licensed by the Secretary of the State Police. *Id.* at §18-501. Therefore, as a matter of law, Appellant submitted a bid that could not be considered because it was not capable of performing the services it offered to engage in.

In light of this licensing infirmity regarding Appellant's bid submission, it is not an interested party as defined in COMAR 21.10.02.01B(1) because it may not be aggrieved by the award of a contract it may not legally obtain, and, therefore, it did not have standing to file its protest under COMAR 21.10.02.02A. Appellant does not dispute the fact that it did not have a security systems agency license as required by Maryland law when it submitted its bid. However, it argues that the MSSTA should not apply in procurements under the General Procurement Law and also argues that the MSSTA should not be found to apply to the procurement herein because the solicitation only advised a bidder that its security systems installers, and not the company itself, needed to be licensed.

The responsibility to know and comply with all applicable law, including the MSSTA, clearly rests with a bidder, and this responsibility was explicitly set forth in the General Provisions included in the IFB. Appellant expressly declared that it had carefully examined the General Provisions, and that it proposed to furnish the labor to furnish security systems improvements at the World Trade Center in accordance with the General Provisions in the Proposal Form that was submitted with its bid. General Provision 7.01A of the IFB states that the Contractor represents and warrants that it is qualified to do business in the State of Maryland. General Provision 7.01C states that the Contractor represents and warrants that it shall comply with all State laws and regulations

⁴At the hearing of the appeal on December 18, 2002 it was noted that Appellant applied for a license after bid opening and that a decision on its application is pending.

applicable to its activities and obligations under the Contract. General Provision 7.02A makes it clear that it is the Contractor's responsibility to procure at its own expense such licenses as may be necessary in order to comply with State laws and regulations in the performance of the work. Here the record reflects that Appellant did not comply with the MSSTA. As such, Appellant's bid could not be considered, and MPA properly rejected it.

The record also reflects that Appellant failed to file its protest in accordance with COMAR 21.10.02.03B which mandates that protests shall be filed within seven (7) days after the basis for the protest was known or should have been known.

Appellant filed its second protest, leading to this appeal, on September 3, 2002. Therefore, to have been timely, the grounds for the protest (disparity in application of the card reader requirement) must not have been known and should not have been known prior to August 27, 2002. Appellant was aware upon filing its first protest on May 23, 2002 that MPA was awarding the Contract to NetVersant. The record reflects and the Board finds that Appellant should have been aware of any alleged wrongdoing in the application of the card reader requirement to NetVersant versus Appellant no later than August 16, 2002, the day upon which Appellant's counsel received MPA's Response to Appellant's Request For Documents (Response). Included in the Response were the references for the card reader requirement that NetVersant submitted and all other documents relied on to support the September 3, 2002 protest that MPA did not apply the card reader requirement evenly as between Appellant and NetVersant and that MPA erroneously found that NetVersant met the card reader requirement. Appellant argues that it is entitled to a reasonable time to assess the documents produced. The documents produced were not voluminous, and allowing, without deciding that such allowance may be appropriate, several days for "review and analysis" of the documents the protest was still late.

This Board has held time and time again that the timeliness requirements of COMAR 21.10.02.03 are substantive in nature and must be

strictly construed since objection to a contract award necessarily prejudices the rights and interests of the low bidder, the agency, and perhaps other interested parties. FMB Laundry, Incorporated, MSBCA 2136, 5 MSBCA ¶467(1999); J&J Reproduction and Drafting Supplies, Inc., MSBCA 1970, 5 MSBCA ¶409(1996); Merjo Advertising and Sales Promotions Company, MSBCA 1948, 5 MSBCA ¶396(1996); Motorola Communications and Electronics, Inc., MSBCA 1343, 2 MSBCA ¶154(1987); International Business Machines Corp., MSBCA 1071, 1 MSBCA ¶22(1982). The requirements of COMAR 21.10.02.03 may not be waived, and failure of a bidder to meet these requirements deprives the Board of jurisdiction. Reliable Reproduction Supply, Inc., MSBCA 2232, 5 MSBCA ¶495(2001) (University System Procurement Policies and Procedures); ISMART, LLC, MSBCA 1979, 5 MSBCA ¶417(1997); ATI Systems and Federal Signal Corp., MSBCA 1911, 1913 and 1918, 5 MSBCA ¶387(1995); see also Kennedy Temporaries v. Comptroller, 57 Md. App. 22(1984). This appeal must also be dismissed because Appellant's protest was not timely filed, and the Board, therefore, lacks jurisdiction over the appeal. See Clean Venture, Inc., MSBCA 2198, 5 MSBCA ¶486(2000).

Notwithstanding that the Board lacks jurisdiction over the matter, we shall discuss the merits of the issues raised by the two (2) protests.

Assuming *arguendo* that the Board had jurisdiction over the appeal, we would find that the Procurement Officer's decisions disqualifying Appellant and denying Appellant's protest related to the card reader requirement were reasonable and otherwise lawful based on the record herein.

The card reader requirement provided:

Submit the names of at least three (3) access control system installation projects completed within the last five (5) years. The projects must include the installation of at least 200 card readers and must have been installed by the Contractor with the same company name bidding this project. List shall include contact names and phone numbers.

In this procurement, Appellant submitted three (3) references in

response to the card reader requirement: Provident Mutual Insurance Company, Pennsylvania Higher Education Assistance Administration, and Paychex, Inc. The reference submissions for Provident Mutual Insurance Company and Paychex, Inc. evidence on the face of the submission document itself that the projects Appellant provided for these companies involved the installation of less than 200 card readers. Moreover, these facts were further confirmed by telephone calls made by PB to reference contact people listed. The third reference, Pennsylvania Higher Education Assistance Administration, included phased installations that, when added together, totaled more than 200 card readers. However, such phased installation did not meet the intent of the card reader requirement that may reasonably be read to require installation of 200 card readers as part of the original installation requirements rather than in phases over time.

The record reflects that NetVersant submitted three (3) references: Northrup Grumman, the Federal Reserve Bank, and the FBI. PB contacted all of these references and confirmed that each one included installations of 200 card readers or more. Two (2) of the referenced jobs, Northrup Grumman and the Federal Reserve Bank, were completed within five (5) years of bid opening. The Procurement Officer had been advised that the FBI job was completed in February of 1997, which is five (5) years and two (2) weeks before the bid opening. The Procurement Officer determined that the two (2) weeks beyond the five (5) year period was immaterial (and the Board does not find such determination regarding materiality to be unreasonable based on the record herein) and found NetVersant met the card reader requirement. In any event, the Contract had yet to be awarded at the time of the hearing herein, and we note that between the filing of the protest that led to the instant appeal and the date of the hearing herein the Procurement Officer became aware that, in fact, the FBI job was not completed until April of 1997, less than five (5) years prior to bid opening. Thus we find that MPA did not apply the card reader requirement in an unlawful, improper or wrongful manner.

Appellant continued to assert in this appeal (while recognizing that

the Board lacks jurisdiction over the matter due to the lack of a timely filed protest as discussed in the Board's Memorandum Opinion in MSBCA 2295) the assertion that it made in its first bid protest and appeal, that the card reader requirement is not a valid guideline for judging a company's experience. Specifically, Appellant maintains that the card reader requirement included by MPA unlawfully restricts competition by favoring larger companies over smaller companies and that the card reader requirement does not reasonably relate to the complexity of the work involved.

We respond by observing that the drafting of specifications is primarily the function of the State's procurement agencies who are in the best position to know what will serve the State's minimum needs. See The Trane Company, MSBCA 1264, 2 MSBCA ¶118(1985); *Md. Code Ann., §13-205(a)* of the *State Finance and Procurement Article*; COMAR 21.04.01.03; COMAR 21.04.01.04. Specifications may not be drawn in such a manner as to favor a single vendor over other vendors. COMAR 21.04.01.02A. However, in reviewing an agency's specifications, this Board will limit its inquiry to a determination as to whether the specifications unreasonably restrict competition. See Lottery Enterprises, Inc., MSBCA 1680, 4 MSBCA ¶314(1992).

The record herein reflects that MPA's card reader requirement was drafted in consultation with MPA's design consultants to insure that the successful bidder had the requisite experience and capability related to a large-scale installation of a card reader system that would be required in an office building with the size and stature of the World Trade Center in Baltimore (WTC). At the time the card reader requirement was drafted, MPA estimated that it would be installing approximately 185 card readers at the WTC. The MPA wanted the successful bidder to have experience in large-scale installation because the WTC is a Class A office building that is registered with the World Trade Center Association as an official World Trade Center office with very high public exposure, and because of significant security concerns that had become more pronounced in the wake of the September 11, 2001 attacks on the World Trade Center buildings in

New York. Further, the WTC building has approximately 50 business tenants for whom the MPA has security and lease obligations, and whose businesses could be disrupted by problems arising from the installation of the access control systems. The record reflects that the decision to include the card reader requirement was based on considerations, including, but not limited to, MPA's design consultant's discussions with access control systems manufacturers, and security contractors in the areas outside of Baltimore. The bids received also demonstrated that more than one (1) vendor met the card reader requirement.⁵ In short, we find that the card reader requirement was not drawn to favor a single vendor over other vendors, that it is reasonably related to the needs of MPA, and that it was not unreasonably restrictive of competition.

For the reasons set forth above, the Board concludes that it lacks jurisdiction over the matter on timeliness grounds, that the Appellant lacked standing to file the protest and that the procurement was conducted in conformance with applicable law and regulation.

Accordingly, it is Ordered this _____ day of December, 2002 that the appeal is dismissed with prejudice.

Dated:

Robert B. Harrison III
Board Member

I Concur:

Michael J. Collins
Board Member

⁵NetVersant's and Johnston Controls' original bid submissions included references that met the card reader requirement. Electronic Technologies Corporation submitted references that met the requirement after bid opening.

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2310, appeal of Wacor Electronic Systems under Maryland Port Administration Contract No. 502906.

Dated:

Loni Howe
Recorder

Exhibit A

**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In The Appeal of Wacor)	
Electronic Systems)	
)	
Under Maryland Port)	Docket No. MSBCA 2295
Administration Contract)	
No. 502906)	

APPEARANCE FOR APPELLANT: Robert Fulton Dashiell, Esq.
Baltimore, MD

APPEARANCE FOR RESPONDENT: Robert L. Munroe
Assistant Attorney General
Baltimore, MD

**MEMORANDUM OPINION BY BOARD MEMBER HARRISON
ON THE MARYLAND PORT ADMINISTRATION'S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR SUMMARY DISPOSITION**

This appeal stems from the denial of Appellant's protest of the Maryland Port Administration's (MPA) inclusion in its Invitation for Bids (IFB) of a specification requiring bidders to demonstrate that they had successfully installed three (3) access control systems projects involving 200 card readers within the past five (5) years (hereinafter referred to as the "card reader requirement"). MPA has moved to dismiss the appeal on grounds that Appellant failed to file its protest to the card reader requirement before the closing date for receipt of the bids, and thus, as a matter of law, its appeal must be dismissed.

Findings of Fact

1. On January 22, 2002, MPA issued an Invitation for Bids for Contract No. 502906.
2. The IFB solicited bids for various building security system improvements to the World Trade Center, which is owned by the MPA. The original IFB did not contain the card reader requirement.
3. On February 26, 2002, MPA issued Addendum No. 2, which among other things added the card reader requirement. The card reader requirement directed each bidder to:

Submit the names of at least three (3) access control system installation projects completed within the last five (5) years. The projects must include the installation of at least 200 card readers and must have been installed by the Contractor with the same company name bidding this project. List shall include contact names and phone numbers.

Appellant admits that it received Addendum No. 2 and was aware of the card reader requirement prior to bid opening.

4. On March 12, 2002, MPA opened the bids. MPA received a total of ten (10) bids. Appellant was the apparent low bidder.
5. After review of the bids, MPA decided to reject Appellant's bid. The basis for this rejection was Appellant's failure to meet the card reader requirement. Appellant was advised of this rejection by letter dated May 14, 2002.
6. On May 23, 2002, Appellant protested MPA's rejection of its bid. In its protest letter, Appellant did not dispute the fact that it did not meet the card reader requirement set forth in the IFB; rather, it stated that its protest was based "on the grounds that 200 readers is not a valid guideline to judge a company's experience and qualifications."
7. On June 18, 2002, the MPA Procurement Officer denied Appellant's protest on the grounds that (relevant to this appeal) Appellant's bid protest was not timely filed in accordance with COMAR 21.10.02.03, which mandates that protests based on improprieties in a bid that are apparent before bid opening must be filed before bid opening.
8. Appellant appealed to this Board on July 1, 2002.
9. Appellant does not dispute that it did not protest the card reader requirement before bid opening.

Decision

Pursuant to COMAR 21.10.02.03A, any objection Appellant had to the card reader requirement was required to be filed prior to bid opening.

Appellant does not dispute that it failed to protest the card reader requirement before bid opening. Appellant's failure to file its protest as required by COMAR is fatal to its protest, and this appeal must be dismissed.

Section 15-216 of the Md. State Finance and Procurement Article provides that the proceedings of this Board are subject to the provisions of the Maryland Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article of the Maryland Code. Section 10-210 of the Md. State Government Article provides that an administrative agency may dispose of a contested case by summary disposition. Consistent with the Board's mission to provide for the expeditious and inexpensive resolution of appeals, the Board has utilized summary disposition as a means to that end.

The Board will grant summary disposition if there is no genuine dispute of material fact, and if the moving party is entitled to disposition in its favor as a matter of law. In considering whether to grant summary disposition, the Board will view the facts, including all inferences from these facts, in the light most favorable to the party against whom disposition is sought.

The law governing the time for filing protests based on alleged improprieties in a solicitation that are apparent before bid opening is clear. COMAR 21.10.02.03A¹ states in pertinent part that:

A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals.

Construing this regulation promulgated by the Board of Public Works, this Board has held time and time again that the timeliness requirements of COMAR 21.10.02.03 are substantive in nature, and must be strictly

¹ It should be noted that General Provision 2.23 of the IFB specifically appraises bidders of COMAR 21.10.02.03A.

construed, since untimely objection to a contract award necessarily prejudices the rights and interests of the low bidder, the agency, and perhaps other interested parties. FMB Laundry Incorporated, MSBCA 2136, 5 MSBCA ¶467(1999); J&J Reproduction and Drafting Supplies, Inc., MSBCA 1970, 5 MSBCA ¶409(1996); Merjo Advertising & Sales Promotions Company, MSBCA 1948, 5 MSBCA ¶396(1996); Motorola Communications and Electronics, Inc., MSBCA 1343, 2 MSBCA ¶154(1987); International Bus. Machines Corporation, MSBCA 1071, 1 MSBCA ¶22(1982). In this regard the Board has held that the requirements of COMAR 21.10.02.03 may not be waived, and failure of a bidder to meet these requirements deprives the Board of jurisdiction. Reliable Reproduction Supply, Inc., MSBCA 2232, 5 MSBCA ¶495(2001); ISMART, LLC, MSBCA 1979, 5 MSBCA ¶417(1997); ATI Systems and Federal Signal Corp., MSBCA 1911, 1913 and 1918, 5 MSBCA ¶387(1995).

The record reflects that the card reader requirement is explicitly set forth on the face of Addendum No. 2 to the IFB; i.e., the card reader requirement was apparent before bid opening. Accordingly, pursuant to COMAR 21.10.02.03A, Appellant's protest concerning the card reader requirement was required to be filed before bid opening. The protest was filed after bid opening. COMAR 21.10.02.03C provides that a protest that is not timely filed may not be considered, and thus the Board lacks jurisdiction to consider the appeal. Therefore, the appeal must be dismissed.

Wherefore, it is Ordered this _____ day of September, 2002 that the appeal is dismissed with prejudice.

Dated:

Robert B. Harrison III
Board Member

I Concur:

Michael J. Collins
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

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- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2295, appeal of Wacor Electronic Systems under Maryland Port Administration Contract No. 502906.

Dated:

Loni Howe
Recorder