

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

Docket No. 2456	Date of Decision: 02/16/05
Appeal Type: <input checked="" type="checkbox"/> Bid Protest	<input type="checkbox"/> Contract Claim
Procurement Identification: Under MVA Purchase Order P-4401089	
Appellant/Respondent: Micrographic Equipment Design, Inc. Motor Vehicle Administration	

Decision Summary:

Interested Party - Jurisdiction - An interested party as defined in COMAR 21.10.02.01B(1) is an actual or prospective bidder. An Appellant's failure to respond to a solicitation excludes it as a bidder, and, therefore, it lacks standing to file a protest. Where an Appellant lacks standing to file a protest, its appeal may not be considered.

THESE HEADNOTES ARE PRODUCED FOR ADMINISTRATIVE REFERENCE AND OPERATIONAL USE ONLY AND SHOULD NOT BE CONSIDERED "OFFICIAL TEXT" OF THE DECISION OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS, NOR SHOULD IT BE REFERENCED OR GIVEN ANY LEGAL STATUS. A COPY OF THE FULL AND COMPLETE DECISION SHOULD BE CONSULTED AND REFERENCED. FOR FURTHER INFORMATION, CONTACT THE BOARD OF CONTRACT APPEALS.

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

In The Appeal of Micrographic)
Equipment Design, Inc.)
)
) Docket No. MSBCA 2456
)
Under MVA Purchase Order)
P-4401089)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Leight D. Collins
 Assistant Attorney General
 Glen Burnie, Maryland

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals the denial of its bid protest that the successful bidder under the above captioned solicitation may not have provided the required product.

Findings of Fact

1. In June, 2004 the Motor Vehicle Administration (MVA) sought to purchase a microfilm scanner for use in the process of the creation of digital records from documents maintained by its Insurance Compliance Division.
2. In this regard, MVA issued a solicitation (J04S0152120) on emarylandmarketplace for a Microfilm Scanner 300 or Equal with bids due by 2:00 P.M. on June 21, 2004.
3. Two bids were received following this solicitation: one from Maryland Micrographics Service Inc. (MMSI), in the amount of \$5650.00, and the other from National Micrographics Systems, in the amount of \$6078.00. The award was made to MMSI, the low bidder, on June 23, 2004, and the equipment was delivered on August 11, 2004
4. Appellant did not submit a response to the solicitation.
5. On September 21, 2004, Appellant protested the award to MMSI on

the basis of alleged conversations with MVA personnel from which Appellant concluded that the delivered machine contains a deliberately altered manufacturer's serial plate where the original equipment manufacturer's serial number was once located.

6. Appellant requested in its protest that the solicitation be rebid, asserting that without the Manufacturer's serial plate, it was unknown whether the low bidder had provided a used, demonstration, "gray market", or stolen product. However, Appellant's Vice President, Mr. Joseph A. Castille, who signed the protest, did not provide any information that the microfilm scanner actually delivered to the MVA by MMSI was in any such condition. Appellant did not provide a reason for its failure to submit a bid in response to the solicitation.
7. On December 17, 2004, MVA's Manager of Procurement and Contracts (Procurement Officer) denied Appellant's protest on the grounds that (1) the protest was not timely filed, and (2) Appellant lacked standing to protest as it had failed to bid in response to the solicitation. In addition, the Procurement Officer advised that the missing or altered serial plates did not affect the performance requirements and that the original 90 day warranty provided by the manufacturer had been extended by MMSI to one year at no cost to MVA.
8. Appellant appealed to this Board on January 3, 2005.
9. The Agency Report was filed on January 27, 2005. Appellant did not file Comment on the Agency Report, and no party requested a hearing. Thus the appeal is decided on the written record.

Decision

The protest was rejected by the Procurement Officer on the basis that Appellant was not an interested party under COMAR 21.10.02.01 and, consequently, had no standing to file a bid protest. Only an interested party may protest. COMAR 21.10.02.02A. As defined in COMAR 21.10.02.01B(1), an interested party is an actual or prospective bidder. Appellant's failure to respond to the

emarylandmarketplace solicitation for the micrographic scanner excludes it as a bidder, and thus Appellant lacked standing to file the protest. Compare Branch Office Supply, MSBCA 2372, 6 MSBCA ¶540 (2003).

The Procurement Officer also found that Appellant's protest was not timely filed. A bid protest must be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier. COMAR 21.10.02.03B. While the MVA argues that Appellant should have known the basis of its protest on June 23, 2004 when the award to MMSI appeared on emarylandmarketplace, the record reflects that Appellant actually had such knowledge on September 9, 2004. Thus, the protest by Appellant received on September 21, 2004 was received beyond the 7 day limit and "may not be considered." COMAR 21.10.02.03C. Branch Office Supply, *supra*; BFI Waste Systems of North America, MSBCA 2115, 5 MSBCA ¶462 (1999); Alliance Roofing & Sheet Metal, Inc., MSBCA 2251, 5 MSBCA ¶502 (2001).

Accordingly, the appeal may not be considered because the Appellant lacks standing and, in any event, did not file a timely protest.

Wherefore it is Ordered this day of February, 2005 that the appeal is dismissed with prejudice.

Dated:

Robert B. Harrison III
Chairman

I Concur:

Michael W. Burns
Board Member

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.

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 2456, appeal of Micrographic Equipment Design, Inc. under MVA Purchase Order P-4401089.

Dated:

Michael L. Carnahan
Deputy Recorder