

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

In The Appeal of)
Rock LLC)
)
) Docket No. MSBCA 2728
Under)
MVA Solicitation No.)
J04S0274582)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Jonathon Acton II
Assistant Attorney General
Baltimore, Maryland

OPINION BY BOARD MEMBER DOORY

The appeal is dismissed for failure to file a timely bid protest, depriving the Board of the requisite jurisdiction.

Findings of Fact

1. On eMarylandmarketplace.com, the Motor Vehicle Administration (MVA) on June 28, 2010 advertised Solicitation No. J04S0274582 for the printing of 80,000 Disabled Persons Parking Placards.
2. On July 1, 2010, MVA evaluated the bids, and determined Merjo Advertising and Sales Promotion Co. LLC (Merjo) to be the apparent lowest bidder.
3. On July 7, 2010, the contract award was posted on eMarylandmarketplace.com. Merjo was ranked first, and the Appellant, Rock LLC (Rock), came in fourth.
4. Mr. Oluwafemi Adedeji of Rock inquired by email to the Procurement officer, Mr. James Branhan, if the award had been determined. That email was sent on July 20, 2010.

Another email that same day questioned the Merjo bid quote of \$0.19800, which would make the total price \$15.84 and not \$15,840.00.

5. The Procurement Officer explained in an email dated July 21, 2010 that the Merjo "bid quoted on the "each price" of 0.19800 x 80,000."
6. The Procurement Officer received a protest letter from Rock by fax on July 21, 2010 and by mail on July 22, 2010. The protest letter agreed that the extended cost for 80,000 placards "as indicated by Merjo Advertising was \$15,840.00" based on the 1,000 unit of measure. However, the Appellant claimed that Merjo had not stated "\$15,840.00" in the bid and that the MVA Procurement Officer gave an unfair advantage because MVA did the math by multiplying 15.840 x 1,000 to derive the \$15,840.000 total amount. The Appellant requested that MVA accept the \$15.84 award which is "the sum that they bided" [sic] or that the award go to Rock for \$17,640.00.
7. The Procurement Officer denied the protest and issued that determination on August 2, 2010.
8. Rock filed a notice of appeal with this Board on August 12, 2010.
9. No party requested a hearing in this appeal.

Decision

The issue to be determined in this appeal is whether the Appellant, Rock LLC, filed its protest within the legal timeframe required by State procurement regulations. COMAR 21.10.02.03B states "protests shall be filed not later than 7 days after the basis for protest is known or should have been known, whichever is earlier."

This time requirement is mandatory and must be strictly construed. Initial HealthCare, MSBCA 2267, 5 MSBCA ¶512 (2000). It is clear that the determination of the date on which a bidder

knew or should have known the basis of the protest is also to be strictly construed by the Board. Clean Venture, Inc., MSBCA 2198, 5 MSBCA ¶488 (2000).

In this matter, MVA advertised a solicitation for 80,000 Disabled Persons Parking Placards on June 28, 2010. The solicitation was advertised on eMarylandmarketplace.com. Bids were due on July 1, 2010. The contract was awarded to the lowest bidder on July 7, 2010, and the award was posted on eMarylandmarketplace.com that same day. For a bid protest to be considered by the Board the protest had to have been filed by July 14, 2010. The Appellant, Rock, knew or should have known of the award because of the public posting on eMarylandmarketplace.com. This protest was filed on July 22, 2010, almost a week after the seven (7) day filing deadline.

The appeal is therefore denied for failure to timely file in accordance with the procurement regulations, thus preventing the Board from having jurisdiction.

Wherefore it is Ordered this _____ day of October, 2010 that the above-captioned appeal is DISMISSED WITH PREJUDICE.

Dated:

Ann Marie Doory
Board Member

I Concur:

Michael J. Collins
Chairman

Dana Lee Dembrow
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 2728, appeal of Rock LLC under MVA Solicitation No. J04S0274582.

Dated:

Michael L. Carnahan
Deputy Clerk