

CHARLES F. RUFF & CO., INC.
NORMAN V. CROUSE CO.
ROSEDALE ROOFING CO., INC.

Bids were received from three contractors as follows:

ROSEDALE ROOFING CO., INC.	\$22,900.00
NORMAN V. CROUSE CO.	\$27,969.00
CHARLES F. RUFF & CO., INC.	\$34,440.00

3. The low bidder, Rosedale Roofing Co., Inc., (Rosedale) was awarded the contract on August 23, 1993.
4. On September 14, 1993, Moisture Controls, Inc., the representative for Haartz-Mason, Inc., the roofing manufacturer, inspected the existing roof prior to Rosedale starting to work. The manufacturer's representative stated that the manufacturer could not warrant the installation if installed as specified. The main concern was the age and condition of the cementitious (porex/tectum) deck and the amount of mechanical fasteners that would have to be installed (40 fasteners per 100 square feet). The manufacturer recommended that a fully adhered system instead be installed, and that would qualify for their 15-year warrant.
5. The Department of General Services was consulted. DGS also agreed that using a mechanical system would possibly weaken the deck and that an adhered system should be installed.
6. Rosedale was asked to give DJS a price to install the fully adhered system. Rosedale's bid was for an additional \$7,000.00 which brought their total bid above that of the next lowest bidder, Norman V. Crouse Co., the Appellant.
7. Because of the change in installation method and the additional costs associated with it, the Insurance Division of the State Treasurer's Office, which is paying for this repair pursuant to its property insurance coverage for State buildings, recommended that the Department of Juvenile Services reject all bids and re-solicit the project with new specifications.
8. On October 1, 1993, before filing a written protest with the

Department of Juvenile Services the Appellant filed with the Board of Contract Appeals the instant appeal requesting Appellant be awarded a contract. While the appeal filed with the Board reflects that a copy was sent to the DJS procurement officer, no Procurement Officer's final decision has ever been issued.

9. The Board of Contract Appeals docketed the appeal upon receipt erroneously believing it to be an appeal from final agency action.

Decision

The Maryland State Board of Contract Appeals has jurisdiction over an appeal from the final decision of an agency procurement officer. State Finance and Procurement Article, §15-220. Under State procurement regulations, a protestor must file a written protest with an agency procurement officer. COMAR 21.10.02.03.04.

It could not be determined from the record whether Appellant has ever submitted a written protest on this matter with the Department of Juvenile Services. However, no final procurement officer's decision has ever been issued on the matter set forth in Appellant's appeal filed with the Board on October 1, 1993.

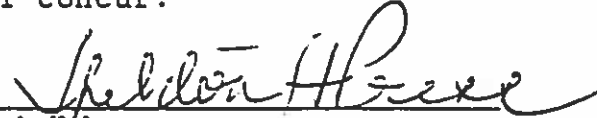
Therefore, this appeal must be dismissed because there is no final agency action from which an appeal may be taken.

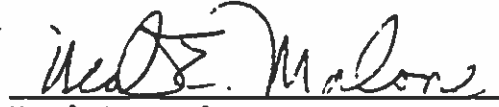
Therefore, it is this 15th day of November, 1993 ORDERED that the appeal is dismissed for lack of jurisdiction.

Dated: November 15, 1993


Robert B. Harrison III
Chairman

I concur:


Sheldon H. Press
Board Member


Neal E. Malone
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 1752, appeal of Norman V. Crouse Co. under DJS Project - Low Roof Replacement, McKeldin Gym - Charles H. Hickey, Jr. School.

Dated: Nov. 15, 1993

Mary A. Priscilla
Mary A. Priscilla
Recorder