

C.T.L.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-18

### OPINION

In this appeal, the Appellant challenges the decision of the Montgomery County Board of Education ("local board") awarding a contract to another vendor. The local board has submitted a Motion for Dismissal and Summary Affirmance arguing that the appeal is untimely and its decision should be upheld because it was not arbitrary, unreasonable or illegal. The Appellant filed a response to the local board's motion, to which the local board filed a reply.

### FACTUAL BACKGROUND

On March 20, 2009, Montgomery County Public Schools ("MCPS") issued an Invitation for Bid, number 7004.12LC for audio and visual equipment and supplies. (Local Bd. Motion, Exh. 1). Following the opening of all sealed bids on April 15, 2009, Barbara Regalia, MCPS Senior Buyer, sent a pre-award notice to all bidders on April 29, 2009. Ms. Regalia stated that MCPS would recommend to the local board that three projector items be deleted from the bid in order to request samples and test different brands. MCPS planned to recommend the changes at the local board's May 12, 2009 meeting. (Local Bd. Motion, Exh. 2; *see also* Exh. 3).

On May 2, 2009, Communications Televideo Limited ("CTL")<sup>1</sup> filed a two-part bid protest with Ms. Regalia. The first part of the protest requested that CTL be awarded the contract for the three deleted projectors because CTL bid models that were approved under the current bid and several previous bids. As a result, CTL contended that it should be granted the award outright and that MCPS need not test other sample models.

In the second part of its protest, CTL argued that the Invitation for Bid should be cancelled and re-issued because it did not contain distinctions between critical and non-critical equipment as had been set forth in previous bids, and which affected the warranty requirements and overall price for the bid items. CTL also questioned MCPS's abrupt decision to cancel the bid items. (Local Bd. Motion, Exh. 4).

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<sup>1</sup> While all correspondence on behalf of the Appellant was sent by William Reider, Educational Sales Manager, we refer herein solely to the corporate entity, CTL.

On May 7, 2009, Philip J. McGaughey, Director of the Division of Procurement, denied CTL's protest. Mr. McGaughey explained that MCPS intended to award a contract for the deleted projectors at a later date, but that the Invitation for Bid clearly provided that the local board reserved the right to make changes to the bid and make awards according to the best interest of the school system. (Local Bd. Motion, Exh. 5).

On May 12, 2009, the local board of education awarded the contract for the remaining items of Bid number 7004.12. (Local Bd. Motion, Exh. 7). Also on that date, CTL sent another letter to Mr. McGaughey requesting reconsideration of its bid protest. (Local Bd. Motion, Exh. 4).

On May 15, 2009, Giles R. Benson, Director, Department of Materials Management, considered CTL's reconsideration request and denied it. Mr. Benson stated that MCPS changed specifications regarding critical or non-critical items several years ago. He also explained that each awarded vendor would comply with the warranty requirements. In closing, Mr. Benson stated that the local board awarded the contract at its May 12, 2009 meeting and advised that CTL should file any further appeal contesting the awarded contract directly with the State Board of Education in accordance with the MCPS Procurement Manual. (Local Bd. Motion, Exhs. 6).

CTL next wrote to the local school superintendent on May 22, 2009. CTL acknowledged the responses received from Mr. McGaughey and Mr. Benson, as well as Mr. Benson's direction that CTL take an appeal to the State Board. However, CTL thought "it prudent" to present its protest for the local superintendent's consideration. (Local Bd. Motion, Exh. 8). On June 14, 2009, Larry Bowers, Chief Operating Officer, responded on the local superintendent's behalf. Mr. Bowers repeated that CTL's bid protests had been denied and if CTL intended to challenge the contract award, it must do so directly with the State Board. (Local Bd. Motion, Exh. 9).

On July 10, 2009, MCPS issued a new bid, number 7194.1LC, Projectors for Classroom and Auditorium Use, which included the projector items that were deleted from the previous bid. CTL submitted a proposal for the new bid.

This appeal to the State Board followed, which was filed on July 13, 2009.

#### STANDARD OF REVIEW

In cases involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the local board's decision shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

## LEGAL ANALYSIS

The local board argues that the appeal should be dismissed because CTL filed it well beyond the mandatory 30 day deadline. Education Article § 4-205(c)(3) of the Annotated Code of Maryland provides that a decision of a local board may be appealed to the State Board if taken in writing within 30 days of the local board's decision. The 30 day time period runs from the later of the date of the order or the opinion explaining the decision. *See* COMAR 13A.01.05.02B(1).

In this case, CTL was first notified on April 29, 2009 that MCPS would recommend cancellation of the bid items at the local board's May 12, 2009 meeting. The letter also included instructions for obtaining a copy of the MCPS procurement protest procedures. (Local Bd. Exh. 2). Subsequently, CTL was notified on May 15, 2009 that the local board awarded the contract at its May 12, 2009 meeting, and that any appeal challenging the award should be filed directly with the State Board in accordance with MCPS procurement procedures. (Local Bd. Exh. 6). The appeal should have been filed with the State Board by June 12, 2009. However, the appeal was not filed until July 13, 2009.

The State Board has strictly enforced the 30-day filing deadline for appeals. *See, e.g., Schwalm v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1326 (1998) and cases cited therein (appeal one day late dismissed for untimeliness). The State Board has consistently applied this rule of law and has even dismissed appeals that have been filed one day late based on untimeliness. *See Philip Twu v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 01-11 (February 27, 2001); *Christine Schwalm v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 620 (1997).

CTL appears to argue that its State Board appeal was timely filed because it sent a letter to Larry Bowers, Chief Operating Officer, on June 19, 2009. CTL incorrectly relies on the date of its letter to the local superintendent's designee as the point from which the mandatory 30 day clock runs. The clock runs from the date of the local board's decision, or the opinion explaining the decision. As noted above, the record shows that CTL was informed about the local board's decision by a May 15, 2009 letter from Mr. Benson. (Local Bd. Exh. 6).

CTL also contends that it was not provided a most recent copy of the "audio visual equipment policy" by MCPS, after submitting its protest letters. To the extent CTL means to argue that it was not provided with a copy of the MCPS Procurement Manual, the record shows that MCPS provided instructions on how CTL could obtain a copy in its April 29, 2009 pre-award notice letter. (Local Bd. Exh. 2). In addition, Mr. McGaughey, Director of the Division of Procurement, submitted a sworn affidavit attesting that vendors are routinely referred to the Procurement Office Website, which contains the office's Procurement Manual that explains bid protest procedures on pages 49 and 50. (*See* McGaughey Affidavit, Sept. 15, 2009 Local Bd.

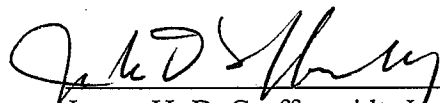
Letter). Section 12.2.1 of that manual provides that, "A vendor may contest a contract awarded by the Board by filing an appeal to the Maryland State Board of Education as provided by Maryland's public school law." Thus, in our view, CTL received adequate information on how to access procurement protest procedures, but failed to do so.

Moreover, even if CTL did not have a copy of the MCPS Procurement Manual, the record shows that CTL disregarded instruction from Mr. Benson's May 15, 2009 letter to file its appeal directly with the State Board. Instead, CTL thought it prudent to first present its complaint to the local superintendent, which led to the untimely filing at issue.


Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *Rawles v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-42 (Aug. 26, 2008); *Scott v. Bd. of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983). Based on our review of the record, there is no extraordinary circumstance present that excuses CTL's failure to comply with the mandatory 30 day deadline.

CONCLUSION

For all these reasons, we dismiss the appeal for untimeliness.

  
James H. DeGraffenreidt, Jr.  
President

ABSENT  
Charlene M. Dukes  
Vice President

  
Mary Kay Finan

ABSENT  
S. James Gates, Jr.

Madhu Sidhu  
Madhu Sidhu

Guffrie M. Smith, Jr.  
Guffrie M. Smith, Jr.

Donna Hill Staton  
Donna Hill Staton

Ivan C.A. Walks  
Ivan C.A. Walks

Kate Walsh<sup>105</sup>  
Kate Walsh

April 27, 2010