

VEND NATURAL, INC.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-41

## OPINION

### INTRODUCTION

Vend Natural, Inc. appealed a decision of the Montgomery County Board of Education (local board) to award a contract to another vendor. The local board filed a Motion to Dismiss or for Summary Affirmance to which Vend Natural replied. The local board filed a Response.

### FACTUAL BACKGROUND

The Montgomery County Public Schools (“MCPS”) issued RFP #7173.2, “Vending Services” on March 22, 2012, requesting vendors interested in providing full vending services to the MCPS at various schools and office locations. On April 13, 2012, the deadline for submitting proposals, MCPS received proposals from two companies, Vend Natural, Inc. and Royale Dining Services, Inc. (“Royale”). By a Pre-Award Notice Letter dated May 8, 2012, the MCPS director of the Division of Procurement, Philip J. McGaughey, Jr., informed Vend Natural that Royale was being recommended for the contract to be awarded at the Board of Education’s public meeting on June 14, 2012. On May 9, 2012, Mr. McGaughey emailed the MCPS procedures for a bid protest to William Carpenter, president of Vend Natural. The procedures state that a bid protest must be filed within seven calendar days of the pre-award notice. Thus, a bid protest should have been filed on May 15, 2012.

On May 15, 2012, Mr. McGaughey and the assistant food service director conducted a debriefing meeting with Mr. Carpenter and several other representatives from Vend Natural. Vend Natural did not file a bid protest on that date. On June 14, 2012, the local board voted to award the contract to Royale.

On August 22, 2012, more than two months after the local board awarded the contract for vending services to Royale, Vend Natural sent an email to Mr. McGaughey attempting to protest the contract award. On August 24, 2012, Mr. McGaughey sent a reply letter to Vend Natural informing the company that its protest was untimely, and therefore, denied.

On September 20, 2012, Vend Natural sent a second letter of protest to Mr. McGaughey in an attempt to have MCPS accept a bid protest. Ms. Kathleen C. Lazor, Director, Department of Materials Management, acting on behalf of the Chief Operating Officer reviewed the matter. In a letter dated September 28, 2012, Ms. Lazor responded to Vend Natural and reiterated that its

bid protest was untimely and that the issues it raised lacked merit. On October 26, 2012, more than four months after award of the contract, Vend Natural filed this appeal with the State Board.

ARGUMENT

The appeal to this Board was filed four months after the local board's June 14, 2012 decision to award the contract to Royalle.

The State Board strictly applies the thirty (30) day filing deadline for appeals. *Schwalm v. Montgomery Co. Bd. of Educ.*, 7 Op. MSBE 1326 (1998); *CTL v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-18 (2010). Vend Natural's argument that its appeal is timely because it is appealing the decision Ms. Lazor's September 28, 2012, letter lacks merit. Appellant cannot extend the deadline for filing an appeal by arguing that it is appealing the latest communication from a school administrator. The appeal time runs from the date of the local board's decision. Therefore, the appeal to this Board is untimely and shall be dismissed.

CONCLUSION

The appeal is dismissed as untimely filed.



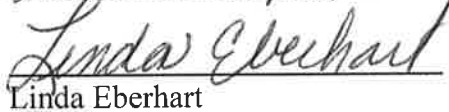
Charlene M. Dukes  
President



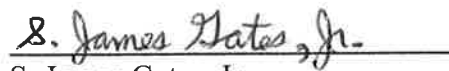
Mary Kay Finan  
Vice President



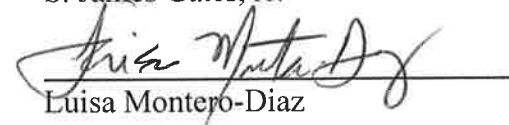
James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.



Luisa Montero-Diaz



Sayed M. Naved

*Madhu Sidhu*

Madhu Sidhu

*Donna Hill Staton*

Donna Hill Staton

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

July 23, 2013