

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
Holder Construction Group, LLC	*	
	*	Docket No. MSBCA 3087
Under University of Maryland	*	
University College	*	
Contract No. 90950	*	
	*	
Appearance for Appellant:	*	Christopher A. Olsen, Esq.
	*	Scott Livingston, Esq.
	*	Rifkin, Weiner, Livingston, LLC
	*	Bethesda, Maryland
	*	
Appearance for Respondent	*	Patrick D. Sheridan, Esq.
	*	Melodie Mabanta, Esq. (Present
	*	Telephonically)
	*	Assistant Attorneys General
	*	Office of the Attorney General
	*	Contract Litigation Unit
	*	Baltimore, Maryland
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OPINION AND ORDER BY CHAIRMAN BEAM ON THE RECORD

After a hearing on July 1, 2020 to consider Appellant, Holder Construction Group, LLC’s, Motion for Summary Decision filed on May 15, 2020, the Response in Opposition filed on June 5, 2020 by Respondent University of Maryland (formerly known as University of Maryland University College), Appellant’s Reply filed on Jun 26, 2020, and the arguments of counsel at the hearing, the Board rendered its unanimous decision on the record. The decision of the Board is set forth below as reported in the Transcript, made pursuant to COMAR 21.10.06.23, and is rendered verbatim therefrom. *See* Tr. Motion for Summary Decision, pp. 122 at Ln. 25 -124, Ln. 23 (July 1, 2020).

DECISION

(On the record at 1:37 p.m.)

CHAIRMAN BEAM:

Back on the record. Okay. We have taken a short recess, and deliberated over Appellant's Motion, UMGC's -- or we've read their motion. We've read and considered UMGC's response thereto, as well as the Appellant's reply. We've heard all the arguments, and considered the exhibits that have been presented today at this hearing. And the Board then finds as follows:

Number one, there is no genuine dispute of material fact that necessitates a hearing on the merits.

Number two, the issues in this appeal involve questions of law; specifically, A, the scope of responsibility of Holder under the contract as construction manager at risk at risk; and, B, whether UMGC provided the written notice required under Section 1.01 of the General Conditions of the contract.

As to the scope of responsibility, we hold that it was Holder's responsibility to comply with the construction manager's obligations under Section 5 of the RFP. Holder had the option and ability to conduct whatever tests it deemed necessary to determine the efficacy of using the UMGC or Marriott-specified carpet and padding. In electing not to do so, Holder assumed the risk that the carpet installation might fail.

As such, under Section 4.08(b) of the General Conditions of the contract, Holder had the obligation to remove and replace the carpet and padding once UMGC determined that it was not satisfied with the attempts to repair.

As to whether UMGC provided the requisite written notice under the contract, we hold that it is undisputed that UMGC did not provide written notice delivered either in person or via registered mail that UMGC was not satisfied with the attempted repairs and was demanding that Holder remove and replace the carpet pursuant to its obligation to do so under Section 4.08(b) of the General Conditions of the contract.

Accordingly, we conclude that there was no breach of the contract by Holder because Holder's obligation to remove and replace the carpet and padding was never triggered.

ORDER

Appellant's Motion for Summary Decision is hereby granted.

* * *

We're adjourned.

(Whereupon, at 1:40 p.m., on July 1, 2020, the hearing was concluded.)

/s/
Bethamy N. Beam, Esq.
Chairman

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF THE UNIVERSITY OF
MARYLAND GLOBAL CAMPUS

FOR JUDICIAL REVIEW OF THE JULY 1, 2020
FINAL DECISION AND THE JUNE 17, 2020
PRECEDING DISCOVERY RULING ISSUED
BY THE MARYLAND STATE BOARD OF
CONTRACT APPEALS

IN THE CASE OF THE APPEAL OF HOLDER
CONSTRUCTION GROUP, LLC, MSBCA NO.
3087

Case No.: CAL20-16404

2021 JUL 27 4:08 PM
MARYLAND STATE
BOARD OF CONTRACT APPEALS

ORDER


Upon consideration of the Petition for Judicial Review, Initial Memorandum and Reply Memorandum filed by the Petitioner, University of Maryland Global Campus ("Petitioner"), the Response to the Petition for Judicial Review and Answering Memorandum filed by the Respondent, Holder Construction Group, LLC ("Respondent"), the administrative record before the Maryland State Board of Contract Appeals ("MSBCA"), and oral argument from the parties, it is the 13th day of July 2021, hereby

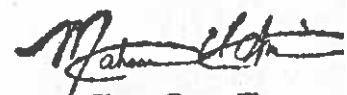
ORDERED that, for the reasons stated on the record during the July 13, 2021 hearing, Respondent's motion to dismiss the Petition for Judicial Review as untimely be, and the same hereby is, **DENIED**; and it is further

ORDERED that, for the reasons stated on the record during the July 13, 2021 hearing, each of the MSBCA's decisions presented by Petitioner for judicial review is hereby **AFFIRMED**; and it is further

ORDERED that the Clerk shall close this case.

SO ORDERED.


The Honorable Tiffany H. Anderson
Circuit Court for Prince George's County


True Copy Test
Mahasin El Amin, Clerk