BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
The Martz Group/Gold Line, Inc.	*	**Docket No. MSBCA 3170**
Under MTA Contract No. OPS-18-002-SR, OPS-18-004-SR A, OPS-18-004-SR B, OPS-18-004-SR C OPS-18-004-SR E	*	
Appearance for Appellant	*	**Jeff R. Vogel, Esq.** **Cozen O'Connor** **Washington, DC 20036**
Appearance for Respondent	*	**Lydia B. Hoover, Esq.** **Eric S. Hartwig, Esq.** **Assistant Attorneys General** **Baltimore, Maryland 21202**

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OPINION AND ORDER BY MEMBER KREIS

Upon consideration of Respondent Maryland Transit Administration's ("MTA or Respondent") Motion to Dismiss and, in the Alternative, Motion for Summary Decision ("Motion"), Appellant The Martz Group/Gold Line, Inc.'s ("Martz or Appellant") Opposition and Cross-Motion for Summary Decision ("Cross-Motion"), Respondent's Reply and Opposition to Cross-Motion, Appellant's Reply, and counsels' arguments at the October 20, 2021 hearing, the Board holds that there are no genuine issues of material fact and that Respondent is entitled to prevail as a matter of law.[1]

[1] The Board need not address Respondent's Motion to Dismiss as it only applies to certain specific types of relief that the Appellant was seeking and Appellant specifically withdrew that aspect of its claim at the October 20, 2021 hearing.

UNDISPUTED FACTS

On October 20, 2017, the Respondent issued the Invitation for Bids for Commuter Bus Routes 305, 315, and 325, Solicitation No. OPS-18-002-SR ("300s IFB"). One contract was to be awarded for all routes.

On December 4, 2017, the Respondent issued the IFB for Commuter Bus Routes 610, 620, 630, 640, and 650, Solicitation No. OPS-19-004-SR A, B, C, D, E ("600s IFB"). One contract was to be awarded for each of the specified routes in the 600s IFB. The 300s and 600s IFBs will be referred to collectively as the IFBs.

The IFBs sought contractors to provide commuter bus services Monday through Friday during peak morning and evening hours. The IFBs did not require contractors to permanently affix the MTA name or logo on its buses and did not require that the buses be dedicated solely as MTA commuter buses. When not in use for MTA commuter services, contractors could use the buses for other purposes, such as private charters and tour services.

The Appellant was the responsive low bidder on five of the six contracts resulting from the IFBs. Following Board of Public Works' approval, the Respondent awarded the contracts to Appellant on April 13, 2018 (Contract No. OPS-18-002-SR), ("300s Contract") and August 16, 2018 (Contract No. OPS-18-004-SR-A, B, C, E), ("600s Contracts"), (collectively, the "Contracts"). The Contracts had five-year terms. The 300s Contract ran from September 1, 2018 - August 31, 2023, while the 600s Contracts ran from November 1, 2018 - October 31, 2023.

> IFB Attachment F – Bid Pricing Instructions/Bid Forms[2] provides, in pertinent part:
> . . .
> B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
> . . .

[2] The IFBs contain the same Attachment F.

> I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
>
> J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in performance of this Contract.

Additionally, the IFB Attachment F – Bid Form requires the contractor to perform all work in strict accordance with the Contract Documents "for the consideration of the amounts, lump sum and unit prices listed in the attached Unit Price Schedule. . . ." The IFB Attachment F – Bid Form – Schedule of Prices provides that the contractor will be paid on a scheduled revenue mile basis for trips actually run and concludes by stating that "[a]ctual annual trips and/or annual revenue miles may vary at the discretion of the MTA."

The 300s IFB estimated the number of daily trips would be 23 for Route 305, 20 for Route 315, and 14 for Route 325. The total estimated annual miles for all three routes combined was 490,500. The 600s IFB contained similar breakdowns of estimated daily trips and total estimated annual miles for each route. In its bids, the Appellant listed its "Price per Revenue Mile"[3] for each of the five years on each contract. Generally, the prices rose slightly each year.

From late 2018 through early March 2020, the Appellant performed the Contracts without encountering any significant issues relevant to this Appeal. On March 5, 2020, Governor Hogan, recognizing the immediate danger to public health and safety presented by COVID-19, issued a Proclamation declaring that a State of Emergency and Catastrophic Health Emergency

[3] The IFB required Appellant to also list its "Cost per scheduled revenue mile" in its bid, which was identical to the "Price per Revenue Mile" on all bids.

existed in the entire State of Maryland. On March 23, 2020, Governor Hogan issued Executive Order ("EO") No. 20-03-23-01, which, among other things, closed all non-essential businesses in the State of Maryland. Numerous Declarations and EOs concerning the COVID-19 global pandemic have been issued, renewed, or amended since March 2020.

Beginning in March 2020, the Respondent experienced a decrease in ridership and thus decreased the number of daily trips, reducing the commuter bus miles per day on all commuter bus routes, including the Appellant's Contracts. On March 17, 2020, the Respondent advised the Appellant that effective March 18, 2020, the State would begin operating on the S Schedule on all routes. The S Schedule is a schedule that is normally used during inclement weather and on holidays. It reduces the trips due to less ridership on those days. Prior to March 18, 2020, the S Schedule had never been implemented for more than two consecutive days. The S Schedule reduced the Appellant's daily trips under the Contracts from 146 trips to 78 trips, which was approximately 53% of the trips estimated by the IFB and the Contracts.

In early April 2020, due to extremely low ridership, the Respondent announced further reductions to the S Schedule, which became effective April 13, 2020. It was called the Modified S Schedule.[4] The creation of the Modified S Schedule further reduced Appellant's daily trips from 78 trips under the S Schedule, to 63 trips, which is 43 percent of the trips estimated in the IFBs and Contracts.

On June 4, 2020, the Respondent requested all commuter bus operators to let it know how long it would take for them to be fully operational if the Respondent decided to go back to full service on all routes. The Appellant initially indicated it would take approximately four weeks, but ultimately said, if pushed, it could probably be ready in three weeks.

[4] The term Modified S Schedule is not used or defined anywhere in the IFBs or Contracts; however, it appears self-explanatory. It is the S Schedule that has been modified to further reduce daily trips.

On June 10, 2020, all commuter bus contractors, including the Appellant, informed the Respondent that the reduced number of revenue miles impacted their ability to remain viable businesses and inquired about the availability of CARES Act[5] funds to supplement revenue lost during the COVID-19 Pandemic.

On June 22, 2020, after the number of COVID cases seemed to be on the decline, the Respondent notified Appellant that Routes 610, 620, and 650 would return to the full schedule on July 13, 2020, and that Routes 305, 315, 325, and 630 would return to full schedules on July 27, 2020. Full bus service was implemented July 13 and 27, 2020, respectively.

In the fall, when COVID cases again began to surge, the Respondent notified bus operators on September 21, 2020, that on October 1, 2020 approximately 2/3 of the routes would be going back to the S Schedule. This information was updated on September 30, 2020, when the Respondent provided the Appellant the official press release stating that the temporary reductions would begin again on November 2, 2020. This decision again resulted in Appellant's daily trips being reduced from 146 to 78.

On October 9, 2020, the Appellant emailed the Respondent and asked whether the Respondent would be issuing change orders related to the decrease in the estimated number of daily trips and miles. By email and letter dated October 14, 2020, the Appellant requested that the Respondent issue change orders, with start and end dates for changes so it could prepare a claim for an equitable adjustment. It further stated that if it did not receive the change orders by October 20, 2020, that the Respondent should consider this letter its "notice of claim effective October 20, 2020. . . ." This letter also specifically requested change orders for the earlier

[5] The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, is a 2.2 trillion economic stimulus bill passed by the 116th U.S. Congress and signed into law by President Donald Trump on March 27, 2020, in response to the economic fallout of the COVID-19 pandemic in the United States.

service reduction from March 18, 2020 through July 27, 2020. On November 17, 2020, the Respondent notified the Appellant that it would not be issuing any change orders because the decrease in the estimated daily routes and bus route miles were within the scope of the Contracts and the authority of the Contract Monitor.

The Appellant filed its Claim on November 19, 2020, in which it again asserted that its Notice of Claim had been filed on October 20, 2020. It claimed it was entitled to the following damages:

a. $103,924.51 per week for operating under the S Schedule in Year 2
b. $123,489.39 per week for operating under the Modified S Schedule in Year 2
c. $101,186.70 per week for operating under the S Schedule in Year 3
d. $2,074.86 per week in years 2 & 3 for COVID-19 related expenses
e. $4000 per driver for recruitment/training costs when the regular schedules resume

The procurement officer ("PO") denied the Appellant's Claim on March 5, 2021. She found that a portion of the Appellant's Claim was untimely filed and that it failed to establish entitlement on the remaining portions. The Appellant filed its Notice of Appeal to the Board on March 29, 2021. The Appellant filed its Complaint with the Board on April 23, 2021, requesting the same damages set forth in its Claim. The Respondent and the Appellant filed Cross Motions for Summary Decision.[6] The Board conducted a hearing on all open motions on October 20, 2021.

STANDARD OF REVIEW

Motion for Summary Decision

In deciding whether to grant a motion for summary decision, the Board must follow COMAR 21.10.05.06D(2): "The Appeals Board may grant a proposed or final summary decision if the Appeals Board finds that (a) [a]fter resolving all inferences in favor of the party

[6] Respondent actually filed a Motion to Dismiss and, in the alternative, Motion for Summary Decision. Oppositions and replies were also filed by all parties.

against whom the motion is asserted, there is no genuine issue of material fact; and (b) [a] party is entitled to prevail as a matter of law." The standard of review for granting or denying summary decision is the same as for granting summary judgment under Md. Rule 2-501(a). *See Beatty v. Trailmaster Prod., Inc.,* 330 Md. 726 (1993). While a court must resolve all inferences in favor of the party opposing summary judgment, those inferences must be reasonable ones. *Crickenberger v. Hyundai Motor America*, 404 Md. 37 (2008); *Clea v. Mayor & City Council of Baltimore*, 312 Md. 662 (1988), *superseded by statute on other grounds*, MD. CODE ANN., STATE GOV'T., §12-101(a). To defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute of material fact by proffering facts that would be admissible in evidence. *Beatty,* 330 Md. at 737-38.

DECISION

I. TIMELINESS

The Respondent claims the Appellant's October 20, 2020 Notice of Claim is untimely and therefore its entire Appeal must fail. The Appellant counters that its claim consists of two separate periods of time: March 18, 2020 - July 27, 2020 ("Period 1") and November 2, 2020 – present ("Period 2"). It contends its Notice of Claim was timely as to both periods, but also makes an alternative argument that even if the Notice of Claim is untimely for Period 1 it is clearly timely for Period 2. The Board finds that the Appellant's Notice of Claim is untimely only as to Period 1. Section 12 "Disputes" of the Contracts provides:

> This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. **Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after he basis for the claim is known or should have been known, whichever is earlier.**

> Contemporaneously with or within thirty (30) days of the filing of the notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02. (emphasis added).

COMAR 21.10.04.02 "Filing of Claim by Contractor," provides in pertinent part:

> A. Unless a lesser period is prescribed by law or by contract, **a contractor shall file a written notice of claim relating to a contract with the appropriate procurement officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier.**
>
> B. Contemporaneously with or within 90 days of the filing of a notice of a claim on a construction contract, or 30 days of this filing on a nonconstruction contract, but no later than the date that final payment is made, a contractor shall submit the claim to the appropriate procurement officer. . . . .
>
> C. **A notice of claim or a claim that is not filed within the time prescribed in Regulation .02 of this chapter shall be dismissed.** (emphasis added).
> . . . .

The Respondent's position oversimplifies the Claim by contending that all alleged damages incurred during both Periods are related to COVID-19 schedule reductions on the Contracts; therefore, the Respondent contends that this is one claim. Its position completely disregards the fact that there was a period of time between the Period 1 and Period 2 reductions when the Contracts routes ran at full capacity.

Although the Appellant correctly points out that there are two distinct Periods to consider in addressing its Claim, it also oversimplifies things by claiming that since COVID-19 was an unknown virus, it could not reasonably predict how long these temporary reductions would last. The Appellant further contends it did not know there was a dispute until it received Respondent's November 17, 2020 letter denying its October 14, 2020 request for change orders and an equitable adjustment.

The undisputed facts support a bit more complex scenario. It is undisputed that the Respondent initiated COVID-19-related schedule reductions on March 18, 2020 by

implementing the S Schedule. It further reduced the routes on April 13, 2020 by implementing the Modified S Schedule. Finally, on June 22, 2020, the Respondent sent an email to commuter bus contractors that stated, "[s]ome good news for everyone," and then advised that routes 610, 620, & 650 would go back to full service starting July 13, 2020, and that the remaining routes would go back to full service July 27, 2020. The good news was short-lived because on September 30, 2020, the Respondent again notified the contractors that effective November 2, 2020, all commuter bus routes would go back on reduced schedules.

Period 1: March 18, 2020 – July 27, 2020

It would be unduly harsh to find that the Appellant had actual knowledge of the basis for its claim on March 18, 2020, the first day the schedule reductions were implemented, and require it to file a notice of claim within 30 days thereof. In March 2020, no business or government entity could predict with a reasonable degree of certainty the long-term impacts of COVID-19. Would the routes be reduced for a couple of days, a couple of weeks, or much longer? For this reason, when addressing timeliness in this matter we are dealing with when the Appellant "should have known" the basis for its claim.

It was uncontradicted that the Appellant immediately began incurring significant financial impacts when the schedule was first reduced on March 18, 2020, and that the impacts increased when the schedule was further reduced. The Appellant made what the Board will characterize as a business decision to wait it out and not immediately file a claim. However, business decisions sometimes come with serious consequences when dealing with strict procurement regulations. Should the Appellant have known the basis for its claim within a few days, a week, two weeks, or a month of March 18, 2020? If it had filed its notice of claim within 30 days of one of those time frames, and we provided the Appellant with all reasonable

inferences, as we are required to do at this point, we might have a factual dispute preventing summary judgment. However, it is undisputed that the Appellant did not submit a Notice of Claim until October 20, 2020,[7] approximately seven months after the initial route reduction. There is no reasonable inference this Board could give to the Appellant that would justify waiting this long to file its Notice of Claim.

The Board has recognized the importance of a timely notice of claim. It has held that the "underlying purpose of the notice of claim requirements of COMAR 21.10.04.02 is to put the agency on notice so it can evaluate the nature of the claim, mitigate loss, consider corrective action, determine if there is any entitlement, and set aside money to pay the claim if it is found to be valid." *Information Sys. & Networks Corp.*, MSBCA No. 2225 (2004) at 15-16. The Appellant's failure to inquire about change orders or to file a notice of claim for several months after the schedule reduction deprived the Respondent of the opportunity to take appropriate responsive actions.

The Board finds there are no genuine issues of material fact regarding whether Appellant's Notice of Claim as to Period 1 was timely filed: it was not. The Respondent is entitled to prevail as a matter of law as to the timeliness of the Appellant's Notice of Claim and Claim as to Period 1.

Period 2: November 2, 2020 – Present

On September 21 & 30, 2020, the Respondent notified bus contractors that it would be reinstituting the S Schedules. It was then that the Appellant should have known that it had a basis for a claim as to Period 2. It is undisputed that the Appellant filed its Notice of Claim on October

[7] The letter serving as the Notice of Claim is dated October 14, 2020, but states that it should be considered a Notice of Claim effective October 20, 2020, if the requested change orders are not issued by that date.

20, 2020 for damages it alleges were incurred for Periods 1 and 2.[8] As to Period 2, the October 20, 2020, Notice of Claim was timely filed within 30 days of both the September 21 & 30, 2020 notices of the reinstitution of route reductions.

On November 2, 2020, the Respondent implemented the reduced schedule again. On November 17, 2020, the Respondent notified the Appellant that it disagreed with the Appellant's position that change orders were required and denied the Appellant's request for an equitable adjustment. Thus, on November 19, 2020, the Appellant filed a timely Claim since it was filed within 30 days of filing its Notice of Claim on October 20, 2021.

Based on the foregoing, there are no genuine issues of material fact as to whether the Appellant's Notice of Claim and/or Claim for Period 2 were timely filed: they were. The Appellant, not the Respondent, is entitled to prevail as a matter of law on the timeliness of its Notice of Claim and Claim for Period 2.

II. MARTZ IS NOT ENTITLED TO AN EQUITABLE ADJUSTMENT

Even though the Appellant's claim for damages incurred during Period 2 was timely filed, it still is not entitled to an equitable adjustment as a matter of law.[9]

No Expectation Damages for Work Not Performed

The Appellant claims that the Respondent is liable for the variation in costs associated with decreases in service volume. Its claim is based upon the full number of estimated revenue miles set forth in the IFBs and characterizes the difference between estimated quantities and commuter bus miles actually provided as a "per mile shortfall." However, this position directly

[8] As stated *supra* in Footnote 6, the Notice of Claim letter was dated October 14, 2020, but it stated that it was only to be considered a Notice of Claim effective October 20, 2020, if the requested change orders were not agreed to by that date. The letter covered alleged damages incurred during Period 1 and damages to be incurred during Period 2.
[9] Likewise, if the Appellant had filed a timely notice of claim as to Period 1, it would still not be entitled to an equitable adjustment as a matter of law. The claim would fail for the same reasons that will be set forth *infra* when addressing Period 2.

conflicts with the plain language of the Contracts. The parties executed service contracts for firm fixed unit prices applicable to each mile of service actually provided. Although the IFB contained estimated quantities to be provided, it provided no guarantee of either a minimum or maximum number of daily commuter bus trips or miles, and, as such, the Respondent is not liable for any variations in the number of routes scheduled or miles driven.

Attachment F to the IFBs specifically instructed bidders on the assumptions they should make in calculating their per mile fixed price to be paid under the Contract. It included the following:

> "All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner."
>
> "All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid."
>
> "Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in performance of this Contract."

Additionally, the bid form in Attachment F, where the Appellant provided its firm fixed price per mile stated:

> "Contractor will be paid on a scheduled revenue mile basis for trips actually run."
>
> "NOTE: Actual trips and/or annual revenue miles may vary at the discretion of the MTA."

Finally, Section 3.2.2.C of the IFB is titled "Service Changes," which states in pertinent part:

> 1. **The Contractor, at MTA's sole discretion, may be required to increase or decrease the number of buses on any service line.**

2. Additional buses shall be placed in service within twenty (20) operating days from the MTA's notice to provide additional buses.

3. The Contract price shall be adjusted by multiplying the revised revenue miles by the applicable revenue mile cost. **This is the sole equitable adjustment to be made as a result of any change to the required service.**

. . .

7. **The MTA will be responsible for establishing schedules and may add or delete trips, alter trip lengths, and/or adjust schedules as required.** MTA will work with the Contractor to ensure that service schedules are both effective and efficient; however, **MTA retains final authority concerning these issues**. If scheduled services are adjusted, **payments to the Contractor shall be adjusted based upon the cost per scheduled route miles.** (emphasis added).

. . . .

Although no one anticipated the coming public health emergency or the deadly impacts associated with COVID-19 when the Contracts were executed, the Contracts clearly provide for schedule changes and specifically address how to handle the issues set forth in the Appellant's Claim. The services to be provided are specifically laid out, the price bid is a fully-loaded firm fixed price, the number of routes and route miles in the IFBs are only estimates that the Respondent had the sole authority to increase or decrease, and, most importantly, the sole equitable adjustment allowed is to multiply the revised revenue miles by the applicable revenue mile cost.

It is undisputed that the Respondent made changes to the schedules reducing routes and miles. More importantly, both prior to and after submitting its Claim, the Appellant billed for the

actual reduced services provided and the Respondent paid for them in full as required in the Contracts.[10] The Appellant is not entitled to an equitable adjustment on this item.[11]

Respondent is Not Responsible for Contractor's Overhead Costs

The Appellant claims it is entitled to be compensated for what it characterizes as personal protective equipment ("PPE"). It specifically identifies costs associated with hand sanitizers, wipes, masks, gloves, and cleaning supplies. The Appellant is responsible for ensuring a safe work environment and complying with CDC directives. As stated previously, the Appellant bid a fully-loaded firm fixed price, and the Contract does not provide a mechanism for the Appellant to recover these additional overhead expenses.

Finally, the Appellant requests future compensation of $4,000 per driver in recruitment and training costs[12] and compensation for fuel storage costs. The fully-loaded firm fixed prices included all costs and expenses associated with the provision of services under the Contracts. The bid prices specifically include labor costs and general operating expenses, and, as such, the Appellant is not entitled to additional compensation under the Contracts.

The Board finds there are no genuine issues of material fact and that the Respondent is entitled to prevail as matter of law. The Appellant is not entitled to any equitable

[10] The Appellant also contended that there had been a scope of work change, that the Contract Monitor was not authorized to direct service changes without a change order, and that there was no mechanism to reduce trips to the S or Modified S Schedule. These arguments are all just slightly different approaches to the main argument addressed *supra* and fail for the same reasons.

[11] Both the Appellant and the Respondent devote space in their memoranda addressing how the *Della Data Systems, Inc.*, MSBCA No. 2146 (2001) and *TPH Industries, Inc.* MSBCA No. 2311 (2003) cases either help or hurt their respective positions. The Board finds the facts and contract language in this case are so clear, unambiguous, and controlling that those cases lack any material relevance to the outcome of this Appeal.

[12] If the Respondent were responsible to pay for recruitment and training costs, this claim would still fail as it is speculative as the costs had not been incurred at the time the claim was filed.

adjustment under its Contracts.[13]

ORDER

Based on the foregoing it is this 2nd day of December hereby:

ORDERED that Appellant's Cross-Motion is hereby denied, in part, as to the timeliness of its Notice of Claim for Period 1 and as to its entitlement to an equitable adjustment; and granted, in part, as to the timeliness of its Notice of Claim for Period 2; and it is further

ORDERED that Respondent's Motion is hereby denied, in part, as to the timeliness of the Notice of Claim for Period 2; and granted as to the timeliness of the Notice of Claim for Period 1 and to Appellant's lack of entitlement to an equitable adjustment; and it is further

ORDERED that a copy of any papers filed by any party in a subsequent proceeding for judicial review shall be provided to the Board, together with a copy of any court orders issued by the reviewing court(s).

[13] Although it played no part in the Board reaching its decision, Martz did receive $1,839,200 under the Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families ("RELIEF Act"). It was a portion of the $8,000,000 specifically set aside for commuter bus operators that were under contract with government entities and that lost revenue as a result of the COVID-19 pandemic. Additionally, in January 2021, Respondent offered all commuter bus contractors a First Amendment to their Contracts. It provided additional relief from the impacts of COVID. All contractors, but Appellant, signed the First Amendment. To receive the benefit of the Amendment, Appellant would have had to waive its right to pursue its Claim.

_____/s/_____
Lawrence F. Kreis, Esq., Member

I concur:

_____/s/_____
Bethamy Beam Brinkley, Esq., Chairman

_____/s/_____
Michael J. Stewart, Esq., 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 contested cases.

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 ten 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 Opinion and Order in MSBCA No. 3170, the Appeal of The Martz Group/Gold Line, Inc. under MTA Contract Nos. OPS-18-002-SR, OPS-18-004-SR A, OPS-18-004-SR B, OPS-18-004-SR C, and OPS-18-004-SR E.

Date: 12/2/2021

/s/
Ruth W. Foy
Deputy Clerk