

**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In The Appeal of)
Koba Institute, Inc.)
)
Under) Docket No. MSBCA 2795
Department of Human Resources)
Residential Child Care Services)
Contract SSA/RCC-11-038)

APPEARANCE FOR APPELLANT: Douglas R. Taylor
Kensington, Maryland

APPEARANCE FOR RESPONDENT: Aretha J. Ector
Scott Moore
Assistant Attorneys General
Baltimore, Maryland

OPINION BY BOARD MEMBER DOORY

Because there is no final action by the agency's procurement officer the Board lacks jurisdiction over this appeal.

Findings of Fact

1. Within the Department of Human Resources (DHR) there is unit known as the Social Services Administration (SSA) charged with implementing the State's Foster Care Program and residential child care services. Each of the counties in Maryland has what is known as a Local Department of Social Services. The Local Departments protect children in their communities who can no longer be safe in their own homes. The Local Departments seek to place children in the least restrictive environment where they can be cared for and allowed to thrive.

2. On April 1, 2011, Koba Institute, Inc. (Koba) entered into contract SSA/RCC-11-038 (contract) by which it agreed to provide residential child care services to children referred to it by the Prince George's County Department of Social Services (PGCDSS). (Respondent's Exhibit A).
3. On May 21, 2011 a serious incident took place at a Koba home involving a youth being assaulted and having his jaw broken by another youth resident. As a result, PGCDSS and DHR's Office of Licensing and Monitoring (OLM) investigated Koba's case management practices, clinical decision making, and safety plans for its residents. In addition to continuing the investigation, Koba was asked to submit a Corrective Action Plan (CAP) addressing the organization's staffing plans.
4. On June 24, 2011 a letter was sent to inform Koba that OLM did not approve of Koba's CAP and the reason for its decision. This letter also addressed another incident where a resident threatened a staff member with a sword and Koba was requested to file another CAP for the second incident.
5. PGCDSS and OLM sent the results of its investigation on July 29, 2011 to Koba. Regarding the incidents in question, the investigation found insufficient staffing, supervision and medical care by Koba. As a consequence, PGCDSS transferred four of the eight children in Koba's care and stopped placing additional children with Koba until the requested CAPs were implemented.
6. Koba filed a notice of claim for breach of contract on August 31, 2011 as a result of action by DHR prohibiting further placement of children in Koba's care. That notice of claim alleged that DHR failed to follow state laws and regulations for the transfer of children to providers and the specific cessation of referrals to Koba. (Respondent's Exhibit B).

7. In a November 8, 2011 letter, Ms Carol Fenderson, the SSA's Contract Manager, restated the investigation findings of PGCDS and OLM and further stated that the Department would not place any children with Koba until it submitted an approved CAP to rectify all non-compliance issues. (Respondent's Exhibit C).
8. Koba did not submit an approved CAP as requested and did not adequately address the non-compliance issues.
9. Koba filed a Notice of Appeal (Appeal) with the Maryland State Board of Contract Appeals (MSBCA) Docket No. 2795 on December 12, 2011 relying on the November 8 letter (Respondent's Exhibit C)(Id.) as both the claim denial and the Department's final action.
10. The November 8 letter does not mention a contract claim or any denial of such a claim. The letter came from SSA's Contract Manager, Ms. Fenderson, not from the procurement officer for the Department.

Decision

Appellant filed a Notice of Appeal with this Board relying on a letter from the Department's Contract Manager. However, that reliance is misplaced. The regulation governing contract disputes is **Code of Maryland Regulations (COMAR) 21.10.04.04 Disposition of Contractor Claim**, which states in part:

- (B) If discussions or negotiations are not conducted or if the contractor claim is not settled, the procurement officer shall prepare a recommended decision on the claim, which normally should contain:
- (1) A description of the claim;
 - (2) A reference to pertinent contract provisions;
 - (3) A statement of factual areas of agreements or disagreements;
 - (4) A statement of the proposed decision, with supporting rationale; and

(5) A paragraph substantially as follows:

This decision is the final action of this agency. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with Regulation .09 of this chapter. If you decide to take such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within 30 days from the date you receive this decision.

Appellant may ultimately file a Notice of Appeal with this Board after it receives from DHR a final agency action on its claim. To be a final agency action, the procurement officer's decision must contain the language described in COMAR 21.10.04.04(B)(5). Prior to the issuance of a final agency action, this Board is without jurisdiction.

The November 8, 2011 letter referenced in the aforementioned findings reiterates the findings in the Investigative Summary Report on the concerns of Koba's performance under the DHR contract SSA/RCC/11-038. The last paragraph states:

Based on the above requirements, DHR is following its contractual and moral obligation to support the safety of its committed youth. DHR and the LDSS have submitted findings regarding concerns for youth safety. DHR has no obligation to continue placement of youth in an environment where there have been findings of safety concerns; nor is DHR obligated to make referrals to a Contractor as outlined in RFP requirement 3.3, outlined above. Your organization is significantly out of compliance with the terms of your Purchase of Care Agreement. Consequently, SSA is placing a suspension on any new referrals for placements with your agency until such time that KOBA has submitted an approved corrective action plan and has remedied all non-compliance issues in support of youth safety and well being.

(Respondent's Exhibit C).

If Koba wants to continue to provide services under the contract, the ball is in its court to follow the terms set forth in the letter, which is to file an approved CAP and remedy all non-compliance issues. There cannot be a final action yet because Koba has not yet responded to SSA's request for a CAP. On the other hand, if Koba does not want to continue under the contract, it simply needs to follow the regulations and communicate with the procurement officer to resolve any outstanding issues pertaining to a contract claim.

In the meanwhile, without a final action from the procurement officer, this Board lacks jurisdiction over this appeal.

Wherefore it is Ordered this _____ day of May, 2012 that the above-captioned appeal is DISMISSED.

Dated:

Ann Marie Doory
Board Member

I Concur:

Michael J. Collins
Chairman

Dana Lee Dembrow
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 2795, appeal of Koba Institute, Inc. under DHR Child Care Services Contract SSA/RCC-11-038.

Dated:

Michael L. Carnahan
Deputy Clerk