

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

In The Appeal of)
Orion Management, LLC)
)
) Docket No. MSBCA 2858
Under MTA Contract)
No. T-8000-0346)

APPEARANCE FOR APPELLANT: Daniel M. Press
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APPEARANCE FOR RESPONDENT: Turhan E. Robinson
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MEMORANDUM ORDER AND OPINION

The Maryland Transit Administration (MTA) on July 31, 2013 filed a Motion for Summary Decision seeking an Order dismissing this appeal prior to trial on the basis of timeliness of filing. The subject appeal was filed with the Maryland State Board of Contract Appeals (Board) by appellant Orion Management, LLC (Orion) on July 1, 2013 concerning a procurement solicitation by MTA for the purpose of selecting a firm to provide services for MTA's Baltimore Metro Detection Project.

It is undisputed between the parties that by correspondence dated May 22, 2013 Orion was notified by MTA that its proposal was deemed not reasonably susceptible for award of the subject contract. Following receipt of that rejection letter, namely, on June 6, 2013, Orion received a debriefing from MTA and seven (7) days after the debriefing, on June 13, 2013, Orion filed its protest with MTA.

Appellant states six (6) procedural or substantive bases of its protest to MTA and the Board, as set forth in Orion's July 1, 2013 Notice of Appeal. In its Motion for Summary Decision, MTA claims that appellant's initial protest to MTA was required to be filed by May 29, 2013, seven (7) days after receipt by Orion of the initial letter from MTA notifying Orion of the disqualification of its proposal. Appellant on the other hand argues that the seven (7) day statute of limitations for noting its appeal to MTA began running not from the date of the initial MTA rejection letter, but instead, seven (7) days from the date of the June 6, 2013 debriefing. Neither party requested hearing on the State's Motion for Summary Decision, to which appellant noted its objection on August 21, 2013.

There is no dispute between the parties concerning the standard of review applicable by the Board in rendering its determination of the State's pre-trial Motion for Summary Decision based upon the alleged untimeliness of Orion's June 13, 2013 protest to MTA. Specifically, the Board is authorized to grant summary decision only under circumstances in which: "(a) After resolving all inferences in favor of the party 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." Code of Maryland Regulations (COMAR) 21.10.05.06D(2)(a)&(b).

It is also uncontested by the parties that the strict statute of limitations which applies here permits protests only if filed "not later than 7 days after the basis for protest is known or should have been known." COMAR 21.10.02.03B. As a result, the only factual issue pertinent to the State's Motion is whether Orion knew or should have known of the bases of its protest as of the date of MTA's initial rejection, or by contrast, later, on the date of the subsequent debriefing.

In order to justify the granting of the State's Motion for Summary Decision, the Board must be persuaded that all six (6) of the grounds set forth in Orion's protest to MTA were or should

have been known by Orion as of May 22, 2013, the date of MTA's letter to appellant notifying Orion of MTA's determination that its proposal was not reasonably susceptible for award. However, in the instant protest, resolving all factual inferences in Orion's favor, it is unclear to the Board at this early juncture whether appellant had actual or constructive knowledge of the six (6) protest grounds itemized in appellant's protest as of MTA's May 22, 2013 initial rejection of appellant's proposal. There being in existence genuine issues of material fact concerning that question, the Board determines that it would be premature to grant the State's Motion for Summary Decision at this time. Therefore the Board will neither grant nor deny MTA's Motion for Summary Decision prior to trial, but will instead hold the Motion *sub curia* pending the introduction into evidence of facts relevant and material to the question of timeliness of filing of Orion's protest.

Accordingly, this Board will and does hereby reserve decision on the Motion for Summary Decision for a future date and in the meantime, directs that both parties comply with applicable law and regulation to prepare for hearing on the merits.

SO ORDERED this _____ day of September, 2013.

Dated:

Dana Lee Dembrow
Board Member

I Concur:

Michael J. Collins
Chairman

Ann Marie Doory
Board Member