BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

IN THE APPEAL OF VASTEC, CO.) Docket No. 2272
Under MAA Contract No.	la) dec M de auté (est
MAA-CO-02-007	-) - 1 1 1 1 1 1 1 1 1

May 16, 2002

<u>Bid Protest - Mootness of Appeal</u> - Because the State may not award a contract to a business that has been debarred during the period of debarment, an appeal from a final decision in a bid protest in which a debarred Appellant seeks award of a contract is moot and will be dismissed.

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Joy Sakamoto-Wengel

Assistant Attorney General

Baltimore, Maryland

OPINION BY BOARD MEMBER HARRISON

Respondent, Maryland Aviation Administration (MAA) moves this Board for an order dismissing the timely appeal of Appellant on grounds that Appellant has been debarred from contracting with the State for an indefinite time period and thus the appeal of the denial of Appellant's bid protest is moot.

Findings of Fact

- 1. In November, 2001, MAA issued an invitation for bids for Contract No. MAA-CO-02-007. The specifications for the contract include the furnishing of all supervision, labor, materials, equipment, tools and associated work necessary to upgrade the hot water distribution system at Baltimore/ Washington International Airport.
- 2. Bids were due at 2:00 p.m. and opened at 2:15 p.m. on December 13, 2001. However, Appellant's bid was not timely received and was rejected. After Appellant protested and after a meeting between the MAA and Appellant, the MAA agreed to retain Appellant's late bid pending an investigation of the protest. As part of its investigation of Appellant's bid protest, the MAA retained an expert. Based largely on the conclusion of the expert, on March 27, 2002, the MAA Procurement Officer issued the final agency decision denying Appellant's bid protest. The instant appeal followed on April 1, 2002.
- 3. On April 24, 2002, the Maryland Board of Public Works (BPW) debarred Appellant from contracting, directly or indirectly, with the State of Maryland for an indefinite period of time for an offense listed in Md. Code Ann., State Fin. & Proc. §16-203 (SF§16-203).
- 4. On April 30, 2002, MAA filed a Motion to Dismiss the appeal based on the debarment. Appellant has not responded to the Motion.

Decision

Under Maryland law, the effect of being debarred by the DPW for an offense listed in SF§ 16-203 is that the "...business may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State during the period of debarment[.]" Md. Code Ann., State Fin. & Proc. §16-309(b). Since the BPW debarred Appellant from contracting with the State for an indefinite time period, the MAA is prohibited from contracting with Appellant, thus rendering this appeal moot.

Wherefore, it is Ordered this 16th day of May, 2002 that the appeal is dismissed as moot.

Dated: May 16, 2002	197ALLE ILOURIS LA
2 a	Robert B. Harrison III
	Board Member

I concur:

Randolph B. Rosencrantz Chairman

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 2272, appeal of Vastec, Co. under MAA Contract No. MAA-CO-02-007.

Dated: May 16, 2002	
	Loni Howe
	Recorder

¶513 4