

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

<b>In the Appeal of P. Flanigan &amp; Sons, Inc.</b>	*	
<b>Under Maryland Aviation Administration Solicitation No. MAA-CO-25-001</b>	*	<b>Docket No. MSBCA 3336</b>
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<b>Appearance for Appellant</b>	*	<b>Paul S. Caiola, Esq.</b>
	*	<b>Gallagher LLP</b>
	*	<b>Baltimore, Maryland 21201</b>
<b>Appearance for Respondent</b>	*	<b>Jessica E. Burgard, Esq.</b>
	*	<b>Assistant Attorney General</b>
	*	<b>Office of the Attorney General</b>
	*	<b>Baltimore, Maryland 21202</b>

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**OPINION AND ORDER BY MEMBER STEWART**

The Maryland Aviation Administration (“the MAA”) moves to dismiss this Appeal under COMAR 21.10.05.06C. After considering the parties’ filings and hearing arguments on January 20, 2026, the Maryland State Board of Contract Appeals (“the Board”) dismisses the Appeal for failure to state a claim upon which relief can be granted.

**PROCEDURAL HISTORY AND RELEVANT FACTS**

On August 11, 2025, the Board issued an opinion and order in Docket No. MSBCA 3297, sustaining an appeal of the denial of a protest of P. Flanigan & Sons, Inc. (“P. Flanigan”) concerning the same solicitation at issue here. The procedural history and findings of fact from that Opinion and Order are hereby incorporated by reference. In that Opinion, the Board determined that the procurement officer (“PO”) violated COMAR 21.05.02.12(C)(1) when she allowed Allan Myers MD, Inc. (“Allan Myers”) to correct a mistake in its bid when the correction was not clearly evident on the face of the bid. *P. Flanigan & Sons, Inc.*, MSBCA 3297 (2025).

While Docket No. MSBCA 3297 was pending, the Board of Public Works (the “BPW”) approved the MAA’s request on May 21, 2025, to award the contract (the “Contract”) to Allan Myers to protect the State’s substantial interest in the federal funds that the MAA planned to use on the Project. Allan Myers and the MAA executed the Contract on May 30, 2025. The MAA issued the Notice to Proceed on June 5, 2025, and Allan Myers began work on June 6, 2025. On August 15, 2025, the MAA issued a stop work order to Allan Myers to evaluate how to proceed because of the Board’s decision in Docket No. MSBCA 3297.

On September 10, 2025, the MAA requested that the BPW find the Contract voidable under State Finance & Procurement Article (“SF&P”) § 11-204(C)(1), but later withdrew the request from consideration. On September 23, 2025, as the next meeting of the BPW approached, Christopher Fontaine, counsel for the Maryland Department of Transportation (“MDOT”), called P. Flanigan’s counsel, Paul S. Caiola, to report that the MAA did not plan to renew its request to the BPW, but rather that it was now considering rebidding the work by “cancelling” the Procurement and requesting approval from the BPW for a second procurement for the same work. On September 26, 2025, Mr. Caiola sent a letter to Mr. Fontaine requesting that the MAA not “cancel” and rebid, arguing that there is no basis for cancelling the solicitation under the circumstances, and further requesting that the Agency instead recommend award to P. Flanigan, the next lowest bidder.

The MAA subsequently submitted an agenda item to the BPW on October 10, 2025, for its October 22, 2025 meeting, requesting approval for an expedited procurement pursuant to SF&P § 13-108 and COMAR 21.05.06.03. That same day, the MAA sent a letter informing P. Flanigan of

its request to the BPW. On October 22, 2025, the BPW, after discussion, approved the MAA's request to issue an expedited procurement to complete the Project.<sup>1</sup>

On October 17, 2025, P. Flanigan filed a protest alleging that: (1) by submitting the agenda item requesting a new expedited procurement, the MAA showed its intent to cancel the solicitation rather than award the contract to P. Flanigan, the next lowest responsible bidder; and (2) the apparent cancellation occurred without the MAA sending P. Flanigan notice of the cancellation and an explanation of the reason for the cancellation (the "Protest").

The PO issued her final decision denying the Protest on four grounds: (1) the Protest was untimely because P. Flanigan knew or should have known the basis for the Protest after the September 23, 2025 conversation between Messrs. Fontaine and Caiola, and per COMAR was required to file it within seven days, but failed to do so; (2) when the Board sustained P. Flanigan's protest appeal in Docket No. MSBCA 3297, the Contract with Allan Myers was voided by operation of law, and since the solicitation was an essential and integral component of the Contract, it became void when the Contract became void; (3) Allan Myers performed work before the Contract was voided which altered the scope remaining on the Project, thus necessitating material changes to the solicitation; and (4) the Project depends on funding from the Federal Aviation Administration ("FAA") and the FAA regional representative assigned to the MAA advised that it would prefer that the MAA start from the beginning and rebid the Project.

P. Flanigan filed a timely Notice of Appeal of the PO's final decision on December 1, 2025. It asks the Board to find that "the MAA did not, and does not have the authority to, cancel the Procurement, and that the attempted cancellation and rebid are thus arbitrary, capricious, unreasonable, and in violation of law." Respondent filed its Motion to Dismiss on December 16,

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<sup>1</sup> At the October 22<sup>nd</sup> BPW Meeting, counsel for P. Flanigan spoke in opposition to the MAA's request for expedited solicitation.

2025. Appellant P. Flanigan filed its Response in opposition on January 9, 2026. The Respondent did not file a Reply.

### STANDARD OF REVIEW

Upon motion, the Board may dismiss an initial pleading if it appears that the Board cannot grant the relief requested. COMAR 21.10.05.06C. In reviewing a motion to dismiss, the Board assumes the truth of all facts alleged by the appellant. *U.K. Constr. & Mgmt., LLC*, MSBCA 2773 at 2 (2011).

### DISCUSSION

The Board finds that the MAA did not violate any provisions of Maryland procurement law by failing to “cancel” the solicitation or “reject all bids” after Allan Myers’s Contract became void and then requesting approval from the BPW to move forward with an expedited procurement.

#### **Maryland Procurement Law Provides No Authority to Cancel a Solicitation or Reject all Bids After Award**

When a Maryland State agency or unit initiates the procurement of goods or services, the process involves steps that may be understood as phases. The pre-solicitation phase involves the agency or unit assessing its needs, funding, and existing resources to determine if it must issue a solicitation. If so, the agency selects a procurement method, typically an IFB or RFP, to seek bids or proposals. Once an IFB or RFP is drafted, the pre-solicitation phase is completed.

The solicitation phase follows. The solicitation is published on eMaryland Marketplace Advantage (“eMMA”), the States’s online procurement system, a pre-bid or proposal conference is held, and bidders or offerors are given the opportunity to ask the PO written questions about the

solicitation. During this phase, the solicitation may be cancelled by the Agency under SF&P § 13-206(b)(1):

(b) If, with the approval of the [BPW], a unit determines that it is fiscally advantageous or otherwise in the best interests of the State, the unit may:

- (1) cancel an invitation for bids, a request for proposals, or other solicitation; or
- (2) reject all bids or proposals.

SF&P § 13-206(b)(1) was implemented via the promulgation of COMAR 21.06.02.02B(1), which states:

#### B. Cancellation Before Opening.

(1) Before opening of bids or proposals, a solicitation may be cancelled in whole or in part when the procurement agency, with the approval of the appropriate Department head or designee, determines that this action is fiscally advantageous to the State or otherwise in its best interest.

Thus, cancellation of a solicitation may only occur *before* bids or proposals are opened. After opening, the solicitation phase ends and the review or evaluation phase begins.

During the review and evaluation phase, all bids may be rejected under SF&P § 13-206(b)(2) as implemented by COMAR 21.06.02.02C(1), which provides:

#### C. Rejection of All Bids or Proposals.

(1) After opening of bids or proposals but before award, all bids or proposals may be rejected in whole or in part when the procurement agency, with the approval of the appropriate Department head or designee, determines that this action is fiscally advantageous or otherwise in the State's best interest.

The regulation permits rejection of all bids or proposals before contract award. Once an award recommendation is made, approved, and a contract signed, the review or evaluation phase ends.

Here, P. Flanigan attempted to protest a "cancellation" or "lack of a cancellation" of a solicitation that could not legally occur. After bids were opened on August 12, 2024, the BPW approved the award to Allan Myers on May 21, 2025, and the Contract was executed on May 30, 2025, there was no statutory or regulatory authority for the MAA to cancel or reject all bids.

### **The Board Lacks Jurisdiction to Grant the Relief Requested**

While SF&P §11-204(c) allows BPW to make a void contract voidable and permits a unit to ratify or void such a contract, the Board is not aware of any statutory authority that spells out the Agency's options when it chooses not to pursue a "voidable" finding by the BPW. The gravamen of P. Flanigan's position was that the original solicitation remained active and that it was "next in line" and, as such, was entitled to contract award after Allan Myers's Contract became void.<sup>2</sup> The State counters that its only option was to re-solicit to complete the Project, which it chose to do by obtaining approval from the BPW to move forward with an expedited procurement.

We are aware that, at the same October 22 BPW Meeting, another State agency asked for and obtained approval to award to the next lowest bidder when the original contract became void under almost identical circumstances. While this inconsistency between different State agencies is troubling and causes unnecessary confusion – not to mention severely undermining public confidence in the process – the Board's task is limited to determining whether a violation of procurement law occurred in the circumstances of *this* particular procurement, and our jurisdiction does not extend to passing judgment concerning the BPW's decisions in other matters.<sup>3</sup> Because there is no legal basis for this Board to find that the PO's decision to move forward with an expedited procurement in this matter violated Maryland procurement law, we grant Respondent's Motion.

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<sup>2</sup> The Board's jurisdiction allows it to sustain and deny protests based on a finding of whether the procurement laws have been violated. It is not allowed to make specific contract award determinations. *See Substation Test Co.*, MSBCA 2016 & 2023 (1997); *Solon Automated Services, Inc.*, MSBCA 1046 (1982).

<sup>3</sup> Per State Finance & Procurement Article § 15-211 the Board only has jurisdiction over the final decision of a "unit." State Finance & Procurement Article § 11-101(aa)(1) defines a "unit" as an entity in the Executive Branch of State government authorized by law to enter into a procurement contract. The BPW is a body created by Article XII of the Maryland Constitution and has the powers conferred on it by the General Assembly. SF&P § 12-101(b)(1) allows the BPW to control procurement by units.



