

Bid protests happen quickly. We've handled more bid protests than any firm in Maryland. Scott Livingston and the team at RWL are ready — at a moment's notice — to protect your rights under Maryland procurement law.

Maryland Procurement Law Alert

MSBCA Decides Whether Notices of Contract Claims Were Timely Filed

COMAR 21.10.04.02A requires a contractor to “file a written notice of a 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.” Procurement officers will not hesitate to deny any notice of claim filed beyond this 30-day period, as was the case in two recent appeals that came before the MSBCA.

Kirk McKenzie, No. 3059 (Feb. 21, 2018)

In *Kirk McKenzie*, West Side Services, Inc. (“West Side”) entered into a contract with SHA to provide snow and ice removal services. West Side was entitled to receive certain retainer fees if it submitted invoices to SHA by specified dates in the contract. Kirk McKenzie, Vice President of West Side, was informed by SHA in January 2017 that West Side did not receive certain payments from SHA because it failed to submit proper invoices. More than two months later, on April 6, 2017, McKenzie filed a notice of claim which SHA denied as untimely.

On appeal, the MSBCA applied COMAR 21.10.04.02A and granted SHA’s motion for summary decision. The MSBCA held that McKenzie’s April 2017 notice of claim was untimely because, among other reasons: (i) as of

November 30, 2015, McKenzie knew he hadn't received a pre-season retainer fee; and (ii) as of May 10, 2016, McKenzie was required to have sent an invoice to SHA for a season-ending retainer fee, failed to do so, and was never paid such a retainer fee. Therefore, the April 2017 notice of claim was filed several months after McKenzie knew or should have known of the basis for the claims.

Business Interface of Maryland, LLC, No. 3065 (Mar. 19, 2018)

In Business Interface, the Department of Human Services ("DHS") sent to the contractor a notice of termination for convenience on April 10, informing the contractor that the termination would become effective on May 15. In turn, the contractor sent its notice of claim by e-mail (ineffective) and regular mail on May 10. However, the notice of claim was not received until May 15, or five days after the 30-day period expired to file a claim. DHS denied the claim as untimely.

On appeal, DHS filed a motion to dismiss arguing that the notice of claim was untimely pursuant to COMAR 21.10.04.02A. The parties disputed which event triggered the 30-day period—the notice of termination on April 10, or the actual termination on May 15. DHS argued that the contractor was on notice of its claim on April 10; the contractor argued that there was no breach of the contract until the termination became effective on May 15.

In deciding a motion to dismiss a contract claim, the MSBCA assumes the truth of all well-pled facts and reasonable inferences drawn from those facts. Because the contractor pled facts to support an inference that its claim was timely (e.g., the claim did not accrue until May 15), the MSBCA denied the motion to dismiss pending a hearing on the merits.

*Don't let your competitors outsmart you when it comes to Maryland bid protests. **Scott Livingston, Esq.***

Give us a call at [301.951.0150](tel:301.951.0150) or send an [email](#) to find out how we can help.

