

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD**

APPEAL OF: )  
 )  
BLACK CREEK INTEGRATED SYSTEMS CORP. ) CAB No. D-1500  
 )  
Under Contract No. CW21530 )

**PREHEARING CONFERENCE ORDER**

*Filing ID #59749407*

The parties appeared before the Board for a prehearing conference on October 14, 2016. Pursuant to Rule 210.2, the Board issues the following Prehearing Order which outlines the matters discussed at this conference:

- (1) At the prehearing conference, the Appellant conceded that its differing site conditions claim, included as part of its complaint in this matter, was not presented to the contracting officer for a final decision prior to filing an appeal with this Board including that claim. Therefore, the Presiding Judge directed the Appellant to consider making an appropriate amendment to its complaint to remove this differing site conditions claim in light of the fact that the Board has no jurisdiction over claims that were not first presented to the contracting officer for final decision before filing an appeal at the Board.
- (2) For purposes of the hearing on the merits in this matter, the parties shall, in advance of the hearing, stipulate to an accurate and complete public version of the Council of the District of Columbia "Contract Package" inclusive of all documentation collectively submitted to the Council of the District of Columbia as part of the approval process for the subject Contract No. CW21530.
- (3) In addition, the parties shall file a Revised Joint Pretrial Statement with the Board no later than December 2, 2016, to reflect any necessary changes for either party.
- (4) The parties shall appear for a teleconference with the Presiding Judge on December 8, 2016, at 11 a.m., as an additional prehearing conference prior to the hearing date in this matter.
- (5) The hearing on the merits date is changed to begin on December 12, 2016, and continue through December 16, 2016. The hearing shall begin promptly at 9:00 a.m. and end at 4:00 p.m. on each hearing day. The District shall provide a court reporter for the duration of the hearing.

Additionally, the Board ruled on the parties' pending motions as follows:

- (1) The Board granted the Appellant's June 5, 2015, Consent Motion to Enlarge the Time for Appellant to File an Opposition to the District's Motion to Dismiss.
- (2) The Board denied the Appellant's June 10, 2015, Consent Motion for a Status Conference.
- (3) The Board granted the Appellant's December 16, 2015, Consent Motion to Enlarge Time to Supplement the Appeal File.
- (4) The Board granted the District's December 29, 2015, Motion to Enlarge Time to File Discovery Objections.
- (5) The Board denied the Appellant's January 4, 2016, Motion to Strike Fraud Defense or, Alternatively, for the District to Make a More Definite Statement of Its Fraud Allegations.
- (6) The Board granted the Appellant's February 8, 2016, Motion to Enlarge Time to Respond to the District's Motion for Summary Judgment.
- (7) The Board denied the Appellant's February 26, 2016, Motion to Stay the Appeal Until After the Board Issues Decisions on the Appellant's Motion to Strike and the District's Motion for Summary Judgment.
- (8) The Board granted the Appellant's March 2, 2016, Motion to Amend Appellant's Opposition to the District's Motion for Summary Judgment.
- (9) The Appellant's March 29, 2016, Consent Motion for Enlargement of Time to Submit the Rebuttal Expert Report is denied as the Appellant is not entitled to rebuttal testimony at this time.
- (10) The Board denied the Appellant's April 1, 2016, Consent Motion for Enlargement of Time to Submit the Rebuttal Expert Report.
- (11) The District's April 4, 2016, Motion to Limit Rebuttal Testimony is denied as moot.
- (12) The Board denied the District's April 8, 2016, Motion to Stay All Proceedings and for Expedited Consideration of the District's Motion for Summary Judgment Regarding Procurement Exemption.
- (13) The Board denied the Appellant's May 12, 2016, Motion to Strike the District's Joint Expert Report and Experts, or, in the Alternative, to Order the District to Submit a Report(s) Complying with the Rules, and Postponing the Deadline for Appellant's Submittal of its Rebuttal Expert Report(s).
- (14) The Board granted the Appellant's May 16, 2016, Corrected Motion to Strike the District's Joint Expert Report. The present motion is only granted for the purpose of allowing the Appellant to make minor revisions to the prior version of this motion that was filed with the Board. The Motion to Strike the District's Joint Expert Report itself, as discussed above, remains denied.

- (15) The Board granted the Appellant's May 17, 2016, Motion to Strike Certain Documents from the Appeal File.
- (16) The Board denied the District's June 10, 2016, Amended Motion to Stay.
- (17) The Board denied the Appellant's June 14, 2016, Motion for Expedited Ruling on Discovery Motions.
- (18) The Board denied the Appellant's June 17, 2016, Emergency Motion to Strike the District's Amended Motion to Stay and Request for Oral Argument.
- (19) The Board denied the Appellant's June 23, 2016, Motion in Limine to Exclude District Evidence and Argument that the "Council Contract Summary" Establishes, as a Matter of Law that the Exemption Used by the District Was D.C. Code § 2-354.13(4).
- (20) The Board denied the District's June 24, 2016, Motion for Enlargement of Remaining Scheduling Order Dates Including Hearing Date and Expedited Consideration of this Motion.
- (21) The Board denied the Appellant's July 12, 2016, Motion for Status Conference on the Matter of Discovery.
- (22) The Board denied the District's July 14, 2016, Motion to Bifurcate the Appeal.
- (23) The District's July 22, 2016, Motion to Strike Appellant's Designation of Second Rebuttal Expert is denied as moot.
- (24) The District's August 2, 2016, Motion to Strike Appellant's Expert Witness Report is denied as moot.
- (25) The Board granted the Appellant's August 19, 2016, Motion for Leave to File Sur-Reply to the District's Motion for Summary Judgment Regarding Procurement Exemption.
- (26) The Board granted the District's August 31, 2016, Motion to Amend Its Second Answer.
- (27) The Board granted the Appellant's September 2, 2016, Motion to Strike Additional Documents from the Appeal File.
- (28) The Board denied the District's September 8, 2016, Motion for Judicial Notice.
- (29) The Board denied the District's September 8, 2016, Motion to Strike Newton Declaration Filed in Support of Appellant's Opposition to the District's Motion for Summary Judgment.
- (30) The Board denied the District's September 8, 2016, Motion to Strike Third Declaration of Hughes Filed in Support of Appellant's Opposition to the District's Motion for Summary Judgment on Defense of Fraudulent Inducement.
- (31) The Board denied the District's September 8, 2016, Motion to Strike Second Newton Declaration and Hughes Declaration Filed in Support of Appellant's Opposition to the District's Motion for Summary Judgment Regarding Procurement Exemption.

- (32) The Board denied the District's September 8, 2016, Motion to Strike Bell Affidavit, Hughes Second Declaration and Newton Fourth Declaration Filed in Support of Appellant's Motion for Summary Judgment on Twenty-Third Defense.
- (33) The Board granted the District's September 14, 2016, Motion to Strike from the Appeal File Pages from an Incomplete Asset Purchase Agreement.
- (34) The Board denied the Appellant's September 14, 2016, Motion to Shift Expert's Costs Stemming from Expert Depositions of Schnure and Kursh.
- (35) The Board denied the District's September 20, 2016, Motion in Limine to Preclude Appellant from Introducing Evidence Regarding the Asset Purchase Agreement.
- (36) The Board granted the District's September 22, 2016, Motion for an Enlargement of Time to File an Opposition to Appellant's Motion to Shift Costs of Expert Deposition.
- (37) The Board denied the District's September 30, 2016, Motion for the Board to Take Judicial Notice of the Council Contract Package.
- (38) The Appellant's October 11, 2016, Motion for Clarification Regarding the Prehearing Conference is denied as moot.

**SO ORDERED.**

DATED: October 26, 2016

/s/ Monica C. Parchment  
MONICA C. PARCHMENT  
Administrative Judge

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