BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of MCCLEAN CONTRACTING COMPANY	)	
	)	Docket No. MSBCA 1288
Under Toll Facilities Administration Contract No. BRB-4-563-4	)	

June 15, 1988

Jurisdiction - Timeliness--Appeal of a procurement officer's final decision denying a contract claim is timely and the MSBCA has jurisdiction pursuant to Maryland Ann. Code, Article 21, §7-201(d)(2), §7-202(c), and COMAR 21.10.04.01B(5). The thirty day appeal period does not begin to run where the procurement officer's decision is defective as to the required notice of appeal rights.

Jurisdiction - Timeliness - Defective Notice--An agency procurement officer's final decision denying a contract claim is defective as to the running of the statutory appeal period where the notice of appeal rights contained in the decision substantially modifies the language of the notice specified by the procurement regulations.

Jurisdiction - Notice of the Right of Appeal--The test of whether the notice received by the contractor in the procurement officer's final decision denying the contractor's claim meets the statutory and regulatory requirements for notice of the right to appeal to the MSBCA is an objective one. This means that the notice must contain the prescribed regulatory notice language to the extent necessary to enable a contractor of ordinary perception to understand its nature and purpose. The notice is defective where it substantially modifies the notice of the right of appeal to a forum other than the MSBCA but where no such right of appeal exists.

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MEMORANDUM OPINION AND ORDER BY MR. KETCHEN

On July 7, 1986, the Toll Facilities Administration (TFA)[1] filed a motion to dismiss the captioned appeal on the grounds that the appeal filed 391 days after receiving the TFA procurement officer's decision denying its claim was untimely and, therefore, the Appeals Board lacks jurisdiction over the subject matter of the appeal.

Findings of Fact

For purposes of TFA's motion, we take as true the following facts set forth in the complaint, TFA's motion to dismiss, Appellant's response to TFA's motion, and the correspondence to the Board. These findings of fact are

[1]TFA is an agency under the Maryland Transportation Authority (MTA) of the Maryland Department of Transportation. We have generally referred to TFA throughout. TFA is the agency identified as the Respondent State agency in the motion to dismiss for lack of Appeals Board jurisdiction. There are also references to MTA, viz., Appellant's civil action. However, these proceedings involve the same claim, contract, issues, disputes and parties whether MTA or TFA is referred to.

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. solely for the purposes of the present motion; they are not binding in any further proceedings in this matter.

1. On March 21, 1980, Appellant entered the captioned contract with TFA, for construction of the Parallel Curtis Creek Drawbridge for the lump sum price of $20,140,884.

2. Under the contract, Appellant was to construct the second drawbridge at Walnut Point, just below Curtis Bay, where the Baltimore Beltway (US Route 695) crosses Curtis Creek at an existing drawbridge linking Anne Arundel County to Baltimore City.

3. This 1980 contract was entered just over a year prior to the effective date of Maryland's omnibus procurement law. Thus, Appellant's contract was subject to the provisions of Chapter 418, Laws of Maryland 1978, which established the Maryland Department of Transportation Board of Contract Appeals ("MDOT Board"), the predecessor of this Appeals Board.

4. A brief review of the history of Maryland's procurement law is pertinent to this motion and serves to focus the facts underlying the issue before the Board. The Court of Special Appeals set forth the background of Maryland procurement law in its decision in McLean Contracting Company v. Maryland Transportation Authority, 70 Md.App. 514, 521 A.2d 1251 (1987) [hereinafter cited as "McLean v. MTA"] as follows:

> Between 1976 and 1981, Maryland General Assembly was quite active in creating and changing procedures for resolving disputes related to DOT procurement contracts. The forum in which a contractor was required to resolve such a dispute changed three times during those five years. We shall summarize relevant legislature history.
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> a. Department of Transportation Board of Contract Appeals
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> Before 1976, the doctrine of sovereign immunity precluded contractors from suing the Maryland Department of Transportation in the circuit courts of this State. By Chapter 450, Laws of Maryland, 1976, the General Assembly enacted a limited waiver of immunity, thereby allowing contractors, on authorized State contracts, to bring an action against the State in those courts.

[Footnote omitted] Two years later, the General Assembly enacted Chapter 418, Laws of Maryland, 1978 (hereinafter, Chapter 418), codified at Md. Transp. Code Ann. §2-601 through 2-604 (1979 Supp.). This legislation established the Department of Transportation Board of Contract Appeals (DOTBCA) within the DOT and gave the DOTBCA "jurisdiction over all disputes other than labor disputes arising under a contract with the Department, or as a result of a breach of a contract with the Department." 1978 Maryland Laws, ch. 418, §1. Chapter 418 and its dispute resolution procedures were to be construed prospectively and were not to be applied to any contract entered into before the effective date of the legislation. 1978, Maryland Laws, ch. 418, §3. Parties to a pre-existing contract, however, could make their agreement subject to those procedures. Maryland Port Administration v. C.J. Langenfelder and Son, Inc., 50 Md.App. 525, 530 n. 4, 438 A.2d 1374 (1982). Thus, the circuit courts were divested of part of their recently acquired original jurisdiction over disputes involving DOT contracts.

b. Maryland State Board of Contract Appeals

In 1980, the General Assembly enacted a comprehensive procurement contract code. With the passage of Chapter 775, Laws of Maryland, 1980 (hereinafter, Chapter 775), provisions governing State procurement of supplies, services and construction were repealed and reenacted under a single code Article. The provisions of Chapter 775 included a contract dispute resolution mechanism. The General Assembly put this mechanism in place through a series of legislative maneuvers:

(1) it abolished the Department of Transportation Board of Contract Appeals and created the Maryland State Board of Contract Appeals, 1980, Maryland Laws, Ch. 775, §9;

(2) it gave the newly created MSBCA jurisdiction to hear and decide any appeal taken from a final action by an agency disapproving a settlement or approving a decision not to settle any dispute involving a State procurement contract, Id;

(3) it transferred all appeals pending before the DOTBCA as of the effective date of the Act (July 1, 1981) to the MSBCA, Id., §22.

Chapter 775 went on to provide that, although existing obligations or contractual rights could not be impaired by the law, its procedural provisions, including those requiring review by the MSBCA, could, at the contractor's option, be applied to contracts in force on the effective date of such provisions. Id., §25.

As eventually and presently codified at Subtitle 2 of Title 17, Division II of the State Finance and Procurement Article, Chapter 775 created a four-step procedure for resolving procurement contract disputes. [Footnote omitted] First, the contractor submits

> its dispute to the agency procurement officer who may "negotiate and resolve" it. Md. State Fin. & Proc. Code Ann. §17-201(a) (1985). Second, an agency head reviews and approves or disapproves the procurement officer's decision. Id. §17-201(c) and (d). Third, the decision of the reviewing authority under step two may be appealed to the MSBCA. Id. §17-201(e). Four, the decision of the MSBCA under step three is subject to review in accordance with the Administrative Procedure Act. Id. §17-203. (Underscoring added).

In summary, a claim under a contract with a Department of Transportation (DOT) agency entered into after July 1, 1976 but prior to July 1, 1978 was not subject to an administrative appeal to the MDOT Board unless the contractor and the DOT agency amended their contract to make these procedures available. See Maryland Port Administration v. C.J. Langenfelder, 50 Md.App. 525, 530 n. 4, 438 A.2d 1374 (1982). From July 1, 1978 and until June 30, 1981, contractors who entered contracts with DOT agencies were required to appeal denial of their contract claims to the DOTBCA. Post July 1978 contracts involving claims pending before the DOTBCA on July 1, 1981 were transferred to the MSBCA. We now know from McLean v. MTA, supra, 70 Md.App. 514, that a contractor who entered a DOT agency contract between July 1, 1978 and June 30, 1981 but whose claim did not arise or was not filed with a DOT agency for consideration until after July 1, 1981, is required to take an administrative appeal to the MSBCA within the statutory prescribed time. McLean v. MTA, supra, 70 Md.App. 514.

5. On October 14, 1982, more than a year after this Appeals Board was established, Appellant filed an impact cost and delay claim initially with TFA in the amount of $3.3 million. This was two months before the bridge was completed. Appellant's claim for additional compensation was submitted under the "equitable adjustment" provision of its contract pursuant to the procedures outlined in the contract's disputes clause, which provides as follows:

GP-5.15 Disputes

> All disputes arising under or as a result of a breach of this Contract which are not disposed of by agreement between the Contractor and Engineer shall be decided by the Administrator or his duly authorized representative who shall reduce his decision to writing and mail by certified or registered mail or otherwise deliver a copy thereof to the Contractor. Any such decision shall be final and conclusive unless within thirty (30) days of receipt of same the Contractor mails or otherwise furnishes a written appeal to the Department of Transportation Board of Contract Appeals. Pending any decision by the Board of Contract Appeals of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the decision of the Administrator or his duly authorized representative.[2]

6. On May 6, 1985, TFA's [MTA] procurement officer, Mr. John A. Moeller, issued his final procurement officer's decision pursuant to the disputes clause of the contract denying Appellant's impact and delay claim in the amount of approximately $3.3 million. The procurement officer's decision in pertinent part states as follows:

> This is the final decision of the Procurement Officer. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with COMAR 21.10.06. If you decide to make such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within thirty (30) days from the date you receive this decision. Since this contract was entered into prior to the establishment of the Maryland State Board of Contract Appeals, you may alternatively elect to proceed as otherwise permitted by law. (Underscoring added).

7. Appellant received the final decision on May 9, 1985. At that time, COMAR 21.10.04.01B (5) provided in pertinent part as follows:

> B. Final Decision . . . . After review by the agency head, the decision of the procurement officer is deemed the final action by the State agency, or its equivalent, as the case may be. The procurement officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

[2]The disputes clause refers to Appellant's right of appeal, although it refers to the now defunct Maryland Department of Transportation Board of Contract Appeals.

* * *

> (5) A paragraph substantially as follows: "This is the final decision of the procurement officer. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with the provisions of the Disputes Clause of the contract. If you decide to make such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within 30 days from the date you receive this decision.

8. On June 6, 1985, Appellant filed a civil action in the Circuit Court for Anne Arundel County against the MTA alleging breach of the March 1980 contract. This suit was not an appeal of the procurement officer's decision.

9. By Memorandum and Order of May 15, 1986 the Circuit Court of Anne Arundel County dismissed Appellant's suit stating:

> But regardless of what either party to a court action has done, if subject matter jurisdiction is lacking, a court cannot preside over the case. It is the finding of this Court that under the [procurement] code provisions and the contract between the parties, the appropriate dispute resolution procedure was through the MSBCA. McLean having failed to appeal the Administration's [MTA] decision to the MSBCA, has not exhausted the appropriate administrative remedy necessary before the Court may exercise jurisdiction over the case.

10. Appellant appealed the Anne Arundel County Circuit Court's order to the Maryland Court of Special Appeals on May 23, 1986.

11. On June 4, 1986 Appellant filed a notice of appeal with the Maryland State Board of Contract Appeals from the "final decision of the procurement officer i.e. Mr. John A. Moeller, dated May 6, 1985" noting that the amount in dispute is $3,304,030.18 without predecision interest. Appellant's notice of appeal was accompanied by a complaint, dated June 3, 1986, alleging the amount of its claim as $3,304,326.40 in impact and delay costs.

12. In response to Appellant's notice of appeal to the Appeals Board, TFA, on July 7, 1986, filed a motion to dismiss on the ground that the

appeal filed more than a year after the TFA procurement officer's final decision was untimely and thus the Board did not have jurisdiction. TFA requested the Board proceedings be held in abeyance pending resolution of this procedural question in the Maryland courts regarding the Appellant's civil action.

13. On August 29, 1986, the Appeals Board placed the captioned appeal on its suspense docket and stayed further action until there was a resolution of McLean v. MTA, supra, 70 Md.App. 514, then pending before the Maryland Court of Special Appeals.

14. The Court of Special Appeals issued its decision on March 6, 1987. In summarizing the facts and its position on TFA's motion, the Court of Special Appeals McLean v. MTA, supra, 70 Md.App. at 517, put the case as follows:

> After filing its answer [to McLean's suit], MTA moved to dismiss the action on the basis that the court lacked subject matter jurisdiction to resolve the dispute. MTA argued that McLean was required to take an appeal to the Maryland State Board of Contract Appeals (MSBCA) before the circuit court could review the dispute.
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> In a well-reasoned and concise opinion, Judge Martin A. Wolff held that McLean had indeed failed to exhaust necessary administrative remedies. For that reason, the court dismissed McLean's suit for lack of subject matter jurisdiction. McLean filed this appeal.
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> In resolving McLean's appeal, we are called to answer a narrow question:
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> > Is the Maryland State Board of Contract Appeals vested with exclusive subject matter jurisdiction to review final agency action in disputes filed after July 1, 1981 involving Maryland Department of Transportation procurement contracts entered into between July 1, 1978 and July 1, 1981?
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> We are convinced that an appeal to the MSBCA is a statutorily mandated prerequisite to circuit court jurisdiction over disputes involving these contracts. Therefore, we shall affirm the decision of the circuit court.

15. On July 24, 1987, the Appeals Board placed the captioned appeal back on its active docket, after it was informed of the Order by the Court of Appeals of Maryland denying Appellant's petition for certiorari. This revives for this Board's consideration at this juncture TFA's motion to dismiss for lack of Board jurisdiction on timeliness grounds.

Decision

The issue we consider is whether Appellant timely appealed the TFA procurement officer's final decision which denied its claim for an equitable adjustment. Appellant does not dispute that its appeal to this Board was filed over one year after it received the TFA procurement officer's final agency decision. Appellant contends, however, that the final decision was legally defective and therefore not a final decision that began the running of Appellant's appeal period. In this regard, Appellant maintains that the final decision failed to give proper written notice of Appellant's appeal rights. It contends that the final decision advised Appellant of a remedy for appeal which was not available. That is, the final sentence of the procurement officer's decision gave advice regarding Appellant's appeal rights that varied from the procurement regulations and thus did not fully and clearly inform it of its appeal rights as required by Maryland procurement law.

The paragraph in the TFA procurement officer's final decision on which Appellant bases its opposition to TFA's motion to dismiss, with the controversial sentence separated and underscored, provides as follows:

> This is the final decision of the procurement officer. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with COMAR 21.10.06. If you decide to make such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within thirty (30) days from the date you receive this decision.

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> Since this contract was entered into prior to the establishment of the Maryland State Board of Contract Appeals, you may alternatively elect to proceed as otherwise permitted by law. (Underscoring added).

Appellant also maintains, in effect, that MTA is estopped to assert that Appellant is barred from an appeal to this Board.

TFA maintains that Appellant's appeal should be dismissed for lack of Board jurisdiction for the untimely filing of its appeal. TFA contends that the additional language in the TFA procurement officer's decision that Appellant relies on should not have misled Appellant, if it in fact did, into assuming that it had a right of appeal to the Maryland courts. TFA further contends that the doctrine of equitable estoppel does not aid Appellant here.

The issue we address is whether the TFA procurement officer's final decision was defective, invalid, or otherwise in error such that the time period within which Appellant was obligated to note an appeal did not begin to run. Our resolution considers the effect of the final sentence of the TFA procurement officer's decision and treats the facts, circumstances, and existing law at the time that decision was issued in the light most favorable to Appellant, since it is TFA's motion to dismiss. Compare Leonhart v. Atkinson, 265 Md. 219, 289 A.2d 1 (1972); Foos v. Steinberg, 247 Md. 35, 230 A.2d 79 (1967) (rules governing limitations are to be strictly construed). See generally Liscombe v. Potomac Edison Co., 303 Md. 619, 495 A.2d 838 (1985).

Maryland procurement law establishes procedures for filing a claim arising under a State contract and for appealing an unfavorable ruling. Maryland Annotated Code, Article 21, Procurement (Volume 2, 1981 Replacement Volume)[3] thus provides as follows:

[3]For convenience sake, we refer to Md. Annotated Code, Article 21 throughout, except as otherwise noted. At the time the TFA procurement officer's decision was issued on May 6, 1985 the provision regarding an administrative appeal after notice of a final agency decision appeared in Art. 21, §7-201

Subtitle 2. Resolution of Controversies Over Contracts.

§ 7-201. Resolution of disputes by procurement officer of using agency.

(a) Authority of procurement officer to negotiate and resolve disputes.—Upon timely demand, as defined in regulations promulgated by the Department, by a prospective bidder or offeror, bidder or offeror, or contractor, the responsible procurement officer of the using agency may, consistent with the budget and all applicable laws and regulations, negotiate and resolve disputes relating to the formation of a contract with the State or a contract which has been entered into by the State. . . . Disputes relating to a contract which has been entered into by the State include but are not limited to those concerning the performance, breach, modification, and termination of the contract.

(b) Resolution to accord with regulations; decision to be in writing; application of Administrative Procedure Act.—The resolution of these disputes shall be in accordance with regulations established by the respective departments, and the procurement officer's decision shall be in writing. Except in the adoption of regulations, the Administrative Procedure Act shall not apply to proceedings under this section.

(c) Review of procurement officer's decision.—The decision of the procurement officer to resolve or not to resolve a dispute shall be reviewed by the agency head unless otherwise provided by regulation. If the agency is part of one of the principal departments or an equivalent unit of government, the decision shall be reviewed by the Secretary or his equivalent unless delegated to the agency head by regulation. The reviewing authority may approve or disapprove the procurement officer's decision. In disapproving a decision not to resolve the dispute, the reviewing authority may order the procurement officer to effect a resolution. The decision of the reviewing authority is deemed final action by the agency, department, or its equivalent, as the case may be.

(d) Appeal to Maryland State Board of Contract Appeals. —

(d)(2). Effective July 1, 1985 the provision regarding appeal after notice of final agency action on a contractor's claim was found at Md. Ann. Code, State Finance and Procurement Article, §17-201(e)(2). Effective July 1, 1987, the comparable provision regarding an administrative appeal appears at Md. Ann. Code, State Finance and Procurement Article, §11-137(f)(1) (1987 Cum. Supp.). Each iteration of the Maryland procurement statute has emphasized that resolution of contract disputes "shall comply with any applicable requirements contained in regulations adopted by the appropriate department." Compare Md. Ann. Code, State Finance and Procurement Article, §11-137(c)(1)(v)(1987 Cum. Supp.) with Md. Ann. Code, State Finance and Procurement Article, §17-201(b) (1985) and with Md. Ann. Code, Article 21, §7-201(b). See also Md. Ann. Code, State Finance and Procurement Article, §17-201(b) (1986 Supp.).

* * *

(2) Within 30 days of receipt of notice of a final action disapproving a settlement or approving a decision not to settle a dispute relating to a contract entered into by the State, the contractor may appeal to the Maryland State Board of Contract Appeals.

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§7-202. Maryland State Board of Contract Appeals.

* * *

(c) Jurisdiction; application of Administrative Procedure Act; regulations. — (1) The Appeals Board shall have jurisdiction to hear and decide all appeals arising under the provisions of §7-201(d) of this article.

(Underscoring added).

Code of Maryland Regulations (COMAR) 21.10.04.01B(5), in effect on the date of the TFA procurement officer's decision, provides as follows:

B. Final decision. . . . After review by the agency head, the decision of the procurement officer is deemed the final action by the State agency, or its equivalent, as the case may be. The procurement officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and include in the decision:

(1) A description of the controversy;
(2) A reference to pertinent contract provisions;
(3) A statement of the factual areas of agreement or disagreement;
(4) A statement of the procurement officer's decision, with supporting rationale; and
(5) A paragraph substantially as follows: "This is the final decision of the procurement officer. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with the provisions of the Disputes Clause of the contract. If you decide to make such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within 30 days from the date you receive this decision." (Underscoring added).

In summary, pursuant to §7-201(b) of the Maryland Procurement Law, COMAR 21.10.04.01B(5) expressly requires that a written final decision denying a contractor's claim identify itself as a final decision, be furnished to

the contractor in a prescribed way, and advise the contractor, using language substantially as set forth in the regulation, that it may appeal an adverse final decision within thirty days to the Maryland State Board of Contract Appeals.

In this regard, the Legislature created a two-tiered administrative procedure to resolve disputes arising under Maryland State contracts. A contractor must first take its claim to the agency procurement officer for negotiation and resolution. Under this system, if the claim is not resolved to the contractor's satisfaction, the contractor is afforded the opportunity to appeal to this Appeals Board if the appeal is taken within thirty days of receipt of the adverse procurement officer's decision. The thirty day appeal period, we have held, is a mandatory requirement that is not waiveable and must be satisfied to perfect the Appeals Board's jurisdiction. Jorge Co., MSBCA No. 1047, 1 MSBCA ¶20 (1982). Md. Port Administration v. C.J. Langenfelder & Son, Inc., 50 Md.App. 525, 438 A.2d 1374 (1982).

We have thus treated the time requirements for filing an appeal as a jurisdictional requirement rather than a limitations requirement, the latter type requirement permitting waiver of time limits for good cause. Compare Roselle Park Trust Co. v. Ward Baking Corp., 177 Md. 212, 9 A.2d 228 (1939) (a statute authorizing a proceeding not allowed by general law must be strictly pursued); Algea v. Schweiker, 529 F. Supp. 163 (1981) ("procedural requirements such as time limitations are more analogous to statutes of limitation than to jurisdictional impediments"); Merrimack Park Recreation Association, Inc. v. County Board of Appeals, 228 Md. 184, 179 A.2d 345 (1962) (In applying Rule B5 of the Maryland Rules of Procedure, good cause was shown. The exercise of reasonable decision thus required rejection of the motion to dismiss where the action or inaction of counsel for the Board of

Appeals, however inadvertant or innocent, lulled Merrimack into a position that caused it to miss the filing deadline that resulted in its appeal being dismissed). See generally Hoover v. Williamson, 236 Md. 250, 203 A.2d 861 (1964) (the time within which suit must be filed was part of the right to sue and not, like an ordinary statute of limitations, a matter of remedy); Jorge Co., Inc., supra; McLean v. MTA, supra, 70 Md.App. 514

We have looked to Federal procurement law from time to time for guidance regarding Maryland procurement law since the Maryland procurement system now in place has its genesis in the Federal procurement system. See C.J. Langenfelder & Son, Inc., MDOT 1000, 1003, 1006 1 MSBCA ¶2 (1980); Solon Automated Services, Inc., MSBCA 1046, 1 MSBCA ¶10, rev'd other grounds, Misc. Law Nos. 82-M-38 and 82-M-42 (Cir. Ct. Balt. Co., Oct. 13, 1982); Dewey Jordan, Inc. v. Maryland-National Capital Park and Planning Comm., 258 Md. 490, 265 A.2d 892 (1970). We must consider with some care, however, the principles of Federal procurement law as they may apply to the instant jurisdictional point.

Prior to March 1, 1979, the effective date of the Federal Contract Disputes Act of 1978 ("Federal CDA"), a contractor could appeal an adverse contracting officer's decision regarding its claim to a Federal agency contract appeals board within thirty days. This appeal process was a long standing administrative and contractual remedy, although it did not have statutory underpinnings. For this reason, some agencies considered it appropriate to waive failure to meet the time requirement for good cause shown. Skyline Construction Co., DOT CAB No. 74-17, 75-1 BCA ¶11,147 (1975) citing Monroe M. Tapper v. United States, 198 Ct.Cl. 72, 459 F.2d 66 (1972) and Maney Aircraft Parts, Inc. v. United States, 197 Ct.Cl. 159, 453 F.2d 1260

(1972); Maney Aircraft Parts, Inc. v. United States, 202 Ct.Cl. 54, 479 F.2d 1350 (1973).

The Federal contract disputes clause prior to 1978, like the Maryland disputes clause, does not specifically direct the contracting officer to notify a contractor of its appeal rights in a final decision denying a claim. Like the Maryland contract disputes clause, the Federal clause prior to the Federal CDA stated that a contractor dissatisfied with a Federal contracting officer's final decision could take an administrative appeal within thirty days. However, a contracting officer was bound by Federal regulation to advise a contractor that it had a right to appeal to the Federal agency contract appeals board from an adverse contracting officer's decision. A final contracting officer's decision that did not comply was defective such that the thirty day period for the contractor to take an appeal did not begin. Compare Roscoe-Ajax Construction Co. v. United States, 198 Ct.Cl. 133, 149, 458 F. 2d 55, 63-64 (1972); Bostwick-Batterson Co. v. United States, 151 Ct.Cl. 560, 565, 283 F.2d 956, 959 (1960). See generally Imperator Carpet & Interiors, Inc., GSBCA 6156, 81-2 BCA ¶15,248 (1981) ("The United States Court of Claims and agency boards have long refused to accord final decision status to communications from the contracting officer that did not strictly comply with agency regulations detailing the required content of such a final decision"). Further, the fact that the contractor might not have complained about the defective notice of appeal rights until a considerable time after the thirty day period had run is of no consequence. Imperator Carpet & Interiors, Inc., supra, at 75,486.

Significantly, the Federal CDA of 1978 provided a statutory basis for resolving Federal contract disputes for what had been an administrative policy regarding notice of appeal rights implemented by Federal regulation. Thus

the Federal CDA now directs that a Federal contracting officer's adverse final decision expressly advise a Federal contractor of its appeal rights, in pertinent part, as follows:

> 41 U.S.C. §605. Decision by contracting officer
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> The contracting officer shall issue his decisions [sic] in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. (Underscoring added.)
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> 41 U.S.C. §606. Contractor's right of appeal to board of contract appeals.
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> Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.
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> 41 U.S.C. §609. Judicial review of board decisions.
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> (a) Actions in United States Claims Court; district court actions; time for filing.
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> (1) Except as provided in paragraph (2)[not applicable], and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Claims Court, notwithstanding any contract provision, regulation, or rule of law to the contrary.
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> (3) Any action under paragraph (1) or (2)[not applicable] shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court. (Underscoring added).

Federal procurement law under the Federal CDA now regards as a jurisdictional prerequisite to appellate review the requirement that a contractor elect its forum and file an appeal either to the appropriate Federal

agency contract appeals board within ninety days or in lieu thereof to the U.S. Claims Court within twelve months. Avon C. Brown, Inc., DOT CAB No. 1082, 80-1 BCA ¶14,399 (1980). If an agency's adverse final decision is not appealed to an agency contract appeals board within ninety days or in lieu thereof to the U.S. Claims Court within twelve months, the agency contracting officer's decision becomes final and conclusive barring further consideration. Compare Cosmic Construction Co. v. United States, 697 F.2d 1389 (Fed. Cir. 1982) and Cosmic Construction Co. v. United States, 5 Cl.Ct. 237 (1984); Olsberg Excavating Co. v. United States, 3 Cl.Ct. 249 (1983); Cosmic Construction Co., ASBCA No. 26537, 82-1 BCA ¶15,523. And, unlike pre-Federal CDA contract appeals, Federal agency contract appeals boards now no longer may waive untimely appeals for good cause shown. Cosmic Construction v. United States, supra, 697 F.2d 1389; Associate Engineering Co., VABCA 2673, "The Government Contractor," ¶160 (Vol. 30, No. 10, May 9, 1988).

However, with regard to notice of an adverse decision required by the Federal CDA, Federal courts and agency contract appeal boards have held that a Federal contracting officer's final decision must fully and clearly advise a contractor specifically and in detail of the procedures for exercising its right to appeal. An adverse final decision is legally defective against a motion to dismiss on the grounds of the untimely filing of an appeal if the decision does not strictly comply with the Federal CDA's notice requirements. Imperator Carpet & Interiors, Inc., supra; Virginia Polytechnic Institute and State University, NASA BCA No. 1281-17, 82-2 BCA ¶16,072 (1982); Milligan Co, ASBCA No. 30798, 85-3 BCA ¶18,406 (1985); J. Fiorito Leasing Ltd., PSBCA No. 1102, 83-1 BCA ¶16,546 (1983). See generally Turtle/White Constructors, Inc. v. United States, 228 Ct.Cl. 354, 656 F.2d 644 (1981);

National Electric Coil v. United States, 227 Ct.Cl. 595 (1981) (pre-Federal CDA contract); Olsberg Excavating Co. v. United States, 3 Cl.Ct. 249 (1983)

Thus a Federal contracting officer's decision that is defective because it does not conform to prescribed notice requirements does not start the running of the time for a contractor to elect its forum in order to take an appeal. In other words, the decision does not become final and conclusive if an appeal is not taken within the specified time. Compare W.H. Moseley, ASBCA No. 27370-18, 83-1 BCA ¶16,272 (1983) (a Federal contracting officer's decision will not be recognized as final and conclusive if its instructions concerning the right to appeal are prejudicially erroneous because these instructions effectively inform the contractor that it need not take a timely appeal to the Armed Services Board of Contract Appeals in order to elect to proceed under the Federal CDA); Vepco, Inc., ASBCA No. 26993, 82-2 BCA ¶15,824 (1982) (a defective communication in a purported final decision from the contracting officer regarding notice of appeal rights is not a final decision for purposes of measuring an appeal's timeliness and thus does not bar a contractor by statutory or contractual time limitations from subsequent appeals or suits); Institute of Modern Procedures, DOT CAB No. 1274, 83-2 BCA ¶16,649 (1983). See also Santa Fe Engineers, Inc. v. United States, 230 Ct. Cl. 512, 677 F.2d 876 (1982); R.G. Robbins Co., Inc., ASBCA No. 26521, 82-1 BCA ¶15,643 (1982); Oregon Land Works, Inc., AGBCA No. 79-166-1A, 83-2 BCA ¶16,638 (1983). In this regard, a Federal contracting officer's decision is the linchpin of the administrative contract appeal process as is the Maryland procurement officer's decision. See R.G. Robbins Co. Inc., supra. And, with regard to the importance of the notice, M.G.C. Co., DOTCAB No. 1553, 85-1 BCA ¶17,777 (1984) at 88,782 states:

> "[t]he notice of appeal rights and other formalities associated with the content and issuance of a Contracting Officer's final decision are for the contractor's protection. See, e.g., R.G. Robbins Co., ASBCA No. 26521, 82-1 BCA ¶15,643, at 77,272. (citations omitted)."

Unlike the Federal CDA of 1978, the Maryland procurement statute does not state directly that a procurement officer's adverse final agency decision is to advise a contractor of its right of appeal to this Board. It only provides that a decision of the agency reviewing authority approving the procurement officer's decision denying a contractor's claim is the final action of the procurement agency and that a contractor may appeal such final action within thirty days after receiving the procurement officer's decision. See Md. Ann Code, Article 21, §7-201(d). However, Maryland's procurement statute expressly states that "the resolution of these disputes shall be in accordance with regulations established by the respective departments." Md. Ann. Code, Article 21, §7-201(b)(1981); Md. Ann. Code, State Finance and Procurement Article, §11-137 (c)(1)(v) (1987 Cum. Supp.). Regarding an adverse final procurement officer's decision, COMAR 21.10.04.01B thus expressly states that the procurement officer "shall immediately furnish a copy of the decision to the contractor . . . , and [shall] include in the decision:

* * *

> (5) A paragraph substantially as follows: 'This is the final decision of the procurement officer. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with the Disputes Clause of the contract. If you decide to make such an appeal, you must mail or otherwise file a written notice of appeal with the Appeals Board within 30 days from the date you receive this decision."

With respect to notice of appeal rights, we find that the underlying principle of fundamental fairness of Maryland's procurement statute as implemented by this regulation is the same as that of Federal procurement law. Thus, a basic tenet of both Maryland and Federal procurement law is

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that a final decision denying a contractor's claim must inform the contractor of its right of appeal. We believe reason dictates, therefore, that the effect of the above Maryland procurement statute and implementing regulation requires that advice as to appeal rights be fully and clearly given in detail to the contractor in compliance with COMAR 21.10.04.01B(5). Thus a procurement officer's decision is prejudicially defective if it gives improper notice of the right to appeal and does not become a final decision for purposes of measuring an appeal's timeliness. Compare Maryland New Directions, Inc., MSBCA 1367, 2 MSBCA ____ (1988). See generally R.G. Robbins Co., Inc., supra at 77,272. In other words, the limitations period specified by the statute and implemented by COMAR 21.10.04.01B(5) does not begin to run until the condition precedent to its commencement, a valid notice, is satisfied. Compare Garner v. Garner, 31 Md.App. 641, 358 A.2d 583 (1976) and Mayor and Council of Federalsburg v. Allied Contractors, Inc., 275 Md. 151, 338 A.2d 275 (1975). See generally Kennedy Temporaries v. Comptroller of the Treasury, 57 Md.App. 22, 468 A.2d 1026 (1983); Kennedy Temporaries, MSBCA 1061, 1 MSBCA ¶21 (1982) n. 2; Maryland Port Administration v. Brawner, 303 Md 44, 492 A.2d 281 (1985); Cassidy v. Baltimore County Board of Appeals, 218 Md. 418, 146 A.2d 896 (1958).

Importantly, the notice language of COMAR 21.10.04.01B(5) is emphasized in the regulation by being expressed as a quotation, but it is preceded by the qualification that a procurement officer giving notice of denial of the claim is to substantially follow the above quoted language in his final decision. We therefore hold that what is required, as far as notice of appeal rights to be given to Appellant is concerned, is communication of the exact thought or message of the quoted material. Thus the procurement officer has some leeway to vary the language of the required notice, although he may not

substantially or materially vary the thought. Compare MGC Co ., supra, 85-1 BCA ¶17,777; Vepco, Inc., supra, 82-2 BCA ¶15,824; Ohio Casualty Insurance Co. v. Insurance Commissioner, 39 Md.App. 547, 387 A.2d 622 (1978). See generally Maryland Port Administration v. Brawner, supra.

Maryland procurement law, as implemented by COMAR 21.10.04.01B(5) regarding notice of appeal rights, thus follows the statutory directive of Md. Ann. Code, §7-201(b) of Article 21 that resolution of contract disputes shall be conducted in accordance with established regulations. We thus reject any notion, as suggested by TFA, that Maryland procurement law permitted the TFA final agency decision to modify substantially, or otherwise disregard, the notice requirement mandated by Maryland procurement regulations promulgated pursuant to, and entirely compatible with, the Maryland procurement statute. Compare Mayor and City Counsel of Baltimore v. Koons, 270 Md. 231, 310 A.3d. 813 (1973) (a regulation implementing a city ordinance permitting the use of space heaters could not be written so narrowly as to prohibit the use of space heaters). See Hopkins v. Md. Inmate Grievance Commission, 40 Md.App. 329, 335, 391 A.3d 1213, 1216 (1978). Compare Kennedy Temporaries v. Comptroller of the Treasury, 57 Md.App. 22, 468 A.2d. 1026 (1983) aff'd, 302 Md. 806; McLean Contracting Inc., MSBCA 1108, 1 MSBCA ¶31 (1982); McLean v. MTA, supra, 70 Md.App. at 526.

The essence of what we are saying with regard to what is required for a valid final procurement officer's decision concerning the required notice was captured some time ago in Sherry-Richards Co., ASBCA No. 6905, 61-2 BCA ¶3167 (1961) as follows:

> In Franklin Clothes, Inc., [sic] ASBCA No. 4302, 23 October 1958, 58-2 BCA ¶1967, the Board said:
>
> > 'In order to hold that the contractor has forfeited his right to appeal, the Board has required compliance with the contract provisions and regulations by the contracting officer. (Citations omitted.)

> 'That this must be the law is enhanced by the realization that failure to appeal forecloses the appellant not only from his administrative remedies but from an action in court as well. (Citations omitted.)
>
> 'If the courts are to continue to support the necessity of administrative appeals and the finality of administrative decisions the rights of the parties must be fully protected and not abrogated except where clearly required.'
>
> In recent years there has been increasing recognition that, in order for a decision under the Disputes clause to create vested rights in favor of the Government if not appealed from within the 30-day appeal period, the decision must be communicated to the contractor in such a fashion that the contractor is fully and clearly informed as to the nature of the decision and his right of appeal within a limited time. To this end the Armed Services Procurement Regulations now require that a copy of the contracting officer's final decision under the Disputes clause . . . include a paragraph informing the contractor that it is a decision under the Disputes clause and of the contractor's right of appeal within 30 days (ASPR [Armed Services Procurement Regulations] 1-314). (Citations omitted). (Underscoring added).[4]

Although the TFA procurement officer's notice given in this appeal regarding Appellant's remedies is not necessarily ambiguous, the issue remaining is whether the final sentence added to the quoted regulatory notice requirement of COMAR 21.10.04.01B(5) was a substantial, i.e., material, variation from the notice required by this regulation.

We consider the language of the procurement officer's decision in the light most favorable to Appellant since it is TFA that brings the motion to dismiss for lack of Appeals Board jurisdiction. Compare Leonhart v. Atkinson, supra. See generally Truck Insurance Exchange v. Marks Rentals, Inc., 288 Md. 428, 435, 418 A.2d 1187, 1191 (1980); Essex Electro Engineers, Inc., ASBCA No. 22070, 77-2 BCA ¶12,671 (1977); Md. Ann. Code, Art. 21 §1-201 (1981) [Md. Ann. Code, State Finance and Procurement Article, §11-102

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[4]The Armed Services Board went on to state that "[i]t would be unconscionable for the contractor to suffer the forfeiture of its right of further appeal as a result of the Engineer Board's noncompliance with its contemplated procedures." Sherry-Richards Co., supra, at 16,451.

(1987)].[5] In doing so, we apply the general rule in Maryland that liberally construes legal requirements relating to remedies and procedure with a view to the effective administration of justice. Compare Criminal Injuries Compensation Board v. Gould, 273 Md. 486, 331 A.2d 55 (1975); Md. Ann. Code, Art. 21, §1-201 (1981) [Md. Ann. Code, State Finance and Procurement Article, §11-102 (1987)]. See generally Institute of Modern Procedures, supra; Md. Port Administration v. Brawner, supra, 303 Md. 44.

We too believe it would be unconscionable for Appellant to suffer the forfeiture of its right to appeal if TFA itself did not comply with the mandatory requirement that a final procurement officer's decision clearly and accurately notify the contractor of its appeal rights in accordance with the substance of the message of prescribed regulatory language specifying the notice to be given. Sherry-Richards, supra, 61-2 BCA at 16,451. See Garner v. Garner, 31 Md.App. 641, 650, 358 A.2d 583, 589 (1976).

In determining the validity of the required notice, the test we apply is an objective one that is not dependent on how the controversial sentence that was added to the notice given in this instance may have been interpreted by the contractor or its advisers. Rather, it is dependent on how a reasonable contractor may have perceived the notice. In this regard, the notice must contain such information and be presented in such a manner so as to enable a contractor of ordinary perception to understand its nature and purpose. See Ottenheimer Publishers Inc. v. Employment Security Administration, 275 Md. 514, 340 A.2d 701 (1975). Compare Cosmic Construction Co., ASBCA No.

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[5] Md. Ann. Code, Art. 21, § 1-201(a)[1981] provides that the procurement law "shall be liberally construed and applied to promote in State procurement the underlying purposes and policies specifically enumerated in subsection (b). Md. Ann. Code, Art. 21 §1-201(b)[1981], provides that "the underlying purposes and policies of this Division II [General Procurement Law] include to: . . . provide for increased public confidence in the procedures followed in public procurement; (2) insure the fair and equitable treatment of all persons who deal with the procurement system of this State . . ."

26537, 82-1 BCA ¶15,541 (1981) (It is the contractor's responsibility, not its attorney's, to determine whether to appeal). See generally R.G. Robbins, Co., Inc., supra at 77,269.

Here the notice in the procurement officer's decision described one avenue of appeal but alluded to the possibility of another. If the procurement officer was not sure of Appellant's appeal rights, we find that the contractor could not be sure. The final sentence of the notice, which Appellant argues was misleading, may have been merely a disclaimer by the TFA procurement officer as to his responsibility for interpreting the procurement law with regard to the legal requirements for taking an appeal. Alternatively, it may have been merely a good faith effort by the TFA procurement officer to warn Appellant that it may have had other remedies under the Maryland procurement statute, or otherwise, in addition to those being described. In any event, the sentence added to the notice language set forth in the regulation resonably could have raised uncertainty in the mind of a reasonably prudent contractor as to what was meant regarding its appeal rights. Reasonably read in one context it could have informed Appellant that it did not have to appeal to the Appeals Board as its sole remedy but that it may have had an election to file a civil action in some other forum, e.g., the Maryland courts. In other words, the sentence that the TFA procurement officer added to the quoted notice language substantially varied the message or thought that the required notice was to give; namely, "You have thirty days to take an appeal to the Appeals Board and only to the Appeals Board and nowhere else." Had the TFA procurement officer not added the sentence and had he followed the regulation, word for word, Appellant would have no cause to complain if it elected not to follow the procurement officer's direction given in compliance with the regulation's quoted words, which specified

the exact message those words were intended to convey. While the procurement officer only had to substantially follow the notice language set forth in COMAR 21.10.04.01 B(5), as we said above, he was not permitted to substantially vary the thought. His words did so in a material way here because they reasonably infer that Appellant had other remedies for resolving its claim which it did not have.

We would not be candid if we did not acknowledge that this Appeals Board was not entirely clear about, and had not had the opportunity to consider, the route of appeal for a contractor in Appellant's shoes at the time of the TFA procurement officer's decision on Appellant's claim. At that time, in 1985, Appellant had entered a contract after July 1, 1978 but before July 1, 1981 with a Department of Transportation (DOT) agency. However, its contract claim did not arise and was not considered by the agency procurement officer for decision until several years after July 1, 1981. Prior to McLean v. MTA, supra, 70 Md. App. 514, there arguably was an issue regarding the forums for resolving a contract dispute available to a contractor where the contract was entered into between July 1, 1978 and July 1, 1981, the effective date of Maryland's procurement law, but where the contract claim did not arise until after July 1, 1981. This issue arose out of the language of Section 22 and Section 25, Chapter 775, Laws of Maryland, 1980. [6] Thus, appeals pending before the DOTBCA on July 1, 1981 were

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[6]Section 25, as well as Section 22, of Chapter 775, Laws of Maryland, 1980, did not find their way into the codified law, although these provisions appear in the "Editor's note" following Article 21, §7-202 of the Maryland Ann. Code, as follows:

> Section 22, ch. 775, Acts 1980 provides that . . . [A]ll appeals pending before the Board of Contract Appeals of the Department of Transportation as of the effective date of this act are transferred to the Maryland State Board of Contract Appeals.
>
> Section 25 of ch. 775 provides that although a presently existing obligation or contract right may not be impaired in any way by this

transferred to the MSBCA pursuant to Section 22, Chapter 775, Laws of Maryland, 1980. The statute, however, was not entirely clear regarding the procedural remedy for a DOT contractor with a contract disputes clause that identified the DOTBCA as the administrative forum for appeal of a claim that had not yet arisen as of July 1, 1981 under a pre-1981 DOT contract.

Thus prior to the decision in McLean v. MTA, supra, 70 Md.App. 514, another reasonable interpretation of the literal language of Section 25 of Chapter 775, Laws of Maryland, 1980, which does not distinguish between DOT contracts and non-DOT contracts, was that a contractor with a pre-July 1, 1981 contract but a post-July 1, 1981 claim had an election either to appeal a procurement officer's adverse decision to the Appeals Board or to bring an action in some form in a Maryland circuit court. Accordingly, under the facts and procedural circumstances of this appeal, Appellant's claim arguably was subject to concurrent jurisdiction of this Appeals Board and the Maryland circuit courts. It was further arguable that the election of forum was Appellant's. See generally Titan Group, Inc., MSBCA 1135, 1 MSBCA ¶63 (1983) (a non-DOT contract);[7] McLean v. MTA, supra, 70 Md.App. 514.

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act, the procedural provisions of this act, including those requiring review by the Maryland State Board of Contract Appeals, may, at the option of the contractor, apply to contracts in force on the effective date of such provisions. (Underscoring added).

[7]Given the waiver of sovereign immunity, presumably non-DOT of Transportation, pre-1981 contracts could proceed under some form of action on a claim directly in a Maryland circuit court. TFA in its brief at page 14 refers to our decision in The Budd Co., MDOT 1034, 1 MSBCA ¶9 (1981) and states as follows:

> "This Board seemed to suggest, at least as far as McLean's argument is concerned, that a Department of Transportation contractor with a pre-July, 1981 contract, could elect to appeal to the Board pursuant to §25. (See, Appellant's Opposition to Motion to Dismiss, note 5 at 16.) On the other hand, the Board had held that such a contractor was obligated to pursue its administrative remedy at the Board and had no elective rights, Appeal of the Budd Company, 1 MICPEL ¶9 ([MDOT] No. 1034, November 9, 1981)...Thus, the best that can be said for McLean is that §25 was subject to some debate as to its import for Department of

Under such circumstances, we believe the required notice set forth in the regulations at COMAR 21.10.04.01B(5) was meant to protect the contractor, where substantive administrative due process rights of a contractor are involved. Therefore, it is reasonable to conclude that the Maryland procurement statute and procurement regulations assigned to TFA the risk that the procurement officer's decision did not become final so as to start the running of the appeal period where TFA chose to change, the language of the required notice by supplementing that language to an extent that substantially varied its meaning. The procurement officer substantially varied the meaning of the required notice by alluding to the possibility of other forums in which the contractor might elect to take its claim but which were not available. The TFA procurement officer's communication concerning Appellant's appeal rights that suggests remedies available in alternative forums could have misled, lulled or confused the Appellant. However, we make no findings in this regard, although we must recognize that Appellant attempted to obtain relief by filing a civil action in a Maryland circuit court. Our decision rests on an evaluation and interpretation of the notice based on the objective test we have set out above. As well, there is no reason to make the State the beneficiary of a confused state of affairs concerning

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Transportation contractors."

However, Maryland State Board of Contract Appeals records show that the Budd appeal, MDOT 1034, was received and docketed by the DOTBCA on April 27, 1981, prior to the effective date of Chapter 775, Laws of Maryland, 1980, on July 1, 1981. The Budd appeal was thus "pending" before the DOTBCA on July 1, 1981 and thus covered by Section 22 of Chapter 775, Laws of Maryland, 1980, which required transfer of the Budd appeal to this Appeals Board. The procedural facts of the instant appeal are different from those in Budd, since Appellant's appeal was not "pending" before the DOTBCA on July 1, 1981. As TFA points out, however, in Budd, supra, we alluded to circumstances similar to those in the instant decision where an appeal arises after July 1, 1981 on a pre-July 1, 1981 contract. In Budd, supra, we thus only identified a question lurking in the background as to the meaning of Section 25, Chapter 775, Laws of Maryland, 1980. That issue was not settled until McLean v. MTA, supra, 70 Md.App. 514.

State contract appeal procedures where, as here, the State has contributed to the confusion. See generally Skyline Construction Co., DOT CAB No. 74-17, 75-1 BCA ¶11,147 (1975). As we said above, statutorily based remedies and procedures are to be construed and applied liberally toward the effective administration of justice but consistent with the legislative intent. Criminal Injuries Compensation Board v. Gould, 273 Md. 486, 331 A.2d 55 (1975); Gnau v. Seidel, 25 Md.App. 16 (1975)

Ruling as we do, and recognizing that the Maryland Court of Special Appeals in McLean v. MTA, supra, 70 Md.App. 514, settled the choice of forum issue, we need go no further to delve into other issues raised and briefed by the parties. We thus are not required to consider application of the principles of equitable estoppel, including whether Appellant, in fact, relied directly on the notice language in the procurement officer's final decision or what other actions Appellant or its advisers may have considered or took.

For the reasons set forth above, therefore, we deny TFA's motion to dismiss. In doing so, we necessarily could oust the Appeals Board from continuing its jurisdiction by dismissing Appellant's appeal without prejudice and remanding to the TFA procurement officer to issue a final decision containing a proper notice that complies with the regulations. However, to put the parties through this useless gesture would elevate form over substance, particularly where the TFA procurement officer issued written determinations on Appellant's claims. Accordingly, we will treat Appellant's notice of appeal received by the Board as a timely appeal of a final procurement officer's decision that would be issued on remand. Maryland New Directions, Inc., MSBCA 1367, 2 MSBCA ____ (1988). Compare E. Coombs Contracting, HUD BCA Nos. 81-616-C27 et al., 81-2 BCA ¶15,404 (1981);

Imperator Carpet & Interiors, Inc., supra, 81-2 BCA ¶15,248 (1981) at 75,487; Habitech, Inc., ASBCA Nos. 26388, 26403, 26404, 26406, 82-1 BCA ¶15,794 (1982).

For the foregoing reasons, therefore, TFA's motion to dismiss is denied.