

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of McLEAN CONTRACTING )  
COMPANY )  
Under MPA Contract No. ) Docket No. MSBCA 1108  
MPA-E80-18(20018) )

March 2, 1983

Jurisdiction - A contractor who entered into a State contract prior to July 1, 1981 may bring an appeal to the Maryland State Board of Contract Appeals provided that the procedural provisions of Chapter 775 of the Laws of 1980 are complied with.

Timeliness - The Board has no discretion to waive the statutory appeal period which is required to be strictly construed.

APPEARANCES FOR THE APPELLANT

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APPEARANCE FOR THE RESPONDENT:

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OPINION BY CHAIRMAN BAKER  
ON APPELLANT'S MOTION FOR RECONSIDERATION

Appellant has moved the Board to reconsider its decision, dated December 21, 1982, dismissing the captioned appeal as untimely. The grounds for this motion are that: (1) under the law applicable at the time the contract was entered into, the appeal period purportedly was not required to be construed strictly and thus may not be construed strictly now; and (2) alternately, under Chapter 775 of the Laws of 1980, the Legislature intended for the administrative disputes procedure to be applied liberally so as to reduce the burden on the courts and resolve disputes expeditiously. These grounds hereafter will be addressed seriatim.

I. Appellant's Entitlement To Pre-July 1, 1981 Procedures

The captioned contract was awarded to Appellant by the Maryland Port Administration (MPA) on August 25, 1980. Under the terms of this contract, disputes between the parties were to be resolved as follows:

### G.P. 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. (Underscoring added.)

The Maryland Department of Transportation (MDOT) Board of Contract Appeals was created by Chapter 418 of the Laws of Maryland of 1978 and was given jurisdiction over "...all disputes other than labor disputes arising under a contract with the Department, or as a result of a breach of contract with the Department."<sup>1</sup> At the time Appellant entered into its contract with the MPA, therefore, it clearly was entitled both contractually and statutorily to have its contract disputes with the MPA resolved by an administrative procedure which included an appeal to the MDOT Board of Contract Appeals. See generally, Appeal of the Budd Co., MDOT 1034, November 9, 1981, pp. 5-8.

Appellant alleges that the MDOT Board of Contract Appeals procedures permitted the 30 day appeal period to be waived upon good cause shown. Assuming, without so finding, that this contention is accurate, it nevertheless is irrelevant with regard to the instant dispute.

On July 1, 1981, approximately 14 months prior to the docketing of the captioned appeal, Chapter 775 of the Laws of 1980 (Act)<sup>2</sup> became effective. Under this Act, the MDOT Board of Contract Appeals ceased to exist and a new Board, the Maryland State Board of Contract Appeals (MSBCA), was created. In order to provide the necessary transition, §22 of the Act required 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." Further, §25 of the Act stated as follows:

AND BE IT FURTHER ENACTED, That although a presently existing obligation or contract right may not be impaired in any way by this Act, the procedural provisions of this Act, including those requiring review by the Maryland

<sup>1</sup> The MPA is an agency within the Maryland Department of Transportation. Md. Ann. Code, Transp. Art, § 2-107.

<sup>2</sup> This Act has been codified as Md. Ann. Code, Art. 21.

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.)

Here Appellant's appeal was not pending on the effective date of the new procurement law. Accordingly, its right to administratively pursue its claim against the MPA was governed by §25 of the Act which permits the procedural provisions of the Act to apply to contracts in force on July 1, 1981. Thus, while Appellant had a right to pursue its contract disputes by appeal to the MSBCA, it was required to do so in accordance with the procedures specified in the Act and its implementing regulations.

II. Procedural Provisions of Chapter 775 of Laws of 1980  
-Contract Disputes

Under §7-201 of the Act, a two tiered administrative procedure was provided for the resolution of contract disputes. The first tier involved consideration by the appropriate State procurement officer who was given broad settlement powers. The procurement officer's decision, whether it involved settlement or denial of a dispute, further was to be reviewed by the agency head or his designee. The decision of the procurement officer, after this review, was to be considered the final action of the agency. A disappointed contractor thereafter was given the right to appeal to the Maryland State Board of Contract Appeals, the second tier of the administrative disputes procedure, as follows:

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. (Art. 21, §7-201(d)(2)).

Upon receipt of a timely appeal, the Board was to hear and resolve the dispute in accordance with its own regulations and the Maryland Administrative Procedure Act. See Md. Ann. Code, Art. 21, §7-202(c)(2).

In the Appeal of Jorge Company, Inc., MSBCA 1047 July 7, 1982, this Board recognized the hoary principle that conditions of a government's consent to judicial or quasi-judicial action against it are to be strictly construed. In creating a statutory administrative procedure in Maryland, the Legislature set forth those conditions under which the State would subject itself to contractual liability. Accordingly, these conditions, including the time period for appeal, are to be strictly construed.

Appellant argues on reconsideration, however, that the new procurement law was intended to be construed liberally so as to insure the fair and equitable treatment of all persons who deal with the procurement system. While we agree that §1-201 of the Act generally requires a liberal construction of Maryland's procurement law, it further recognizes that certain provisions of the Act may mandate a strict construction. For the reasons previously stated, §7-201(d)(2) is one such section of the law which must be construed strictly.

Finally, Appellant again alleges that the final decision of the procurement officer was improperly delivered to Appellant in that a restrictive postal delivery was not specified on the certified mail form. Since this argument merely reiterates what previously was presented to this Board, we see no need to respond further.

Therefore, having considered Appellant's motion for reconsideration and oral arguments in support thereof, we affirm our decision for the reasons set forth above.