



Maryland Procurement ALERT

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The value of little-used MSBCA procedures

The Maryland Procurement ALERT is now featured in [The Daily Record](#).

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On Oct. 2, the Maryland State Board of Contract Appeals issued a somewhat rare one-member opinion in [E & R Services Inc.](#), MSBCA No. 3240 (2023), pursuant to procedures for “small claims” set forth in COMAR. On facts stipulated by the parties (as required by the expedited procedures), board member Lawrence F. Kreis, Jr., held that the contractor, E&R Services, Inc., could not recover for costs incurred due to delay in contract start. Kreis found, pursuant to the undisputed facts, that E & R Services caused the delay.

COMAR provides that contract appeals over relatively small amounts may be conducted under so-called “‘Small Claims (Expedited)’ and ‘Accelerated’ procedures.” Under these procedures, claims of disputes concerning amounts of \$50,000 or less are to be decided “when possible” within 120 days after the appeals board receives written notice of the appellant’s election to use this procedure. Claims of cases concerning amounts up to \$100,000 are to be decided, when possible, within 180 days.

Election of these procedures must generally be made within 60 days after docketing of the

case in the MSBCA. Upon election, the board holds a hearing to: (a) simplify issues, (b) establish simplified procedures, (c) set a hearing date (if any), (d) require the procurement officer provide all correspondence between the parties pertinent to the appeal, and (e) establish an accelerated schedule for resolution of the appeal. Pleadings, discovery and other prehearing activity are to be allowed only as decided at the hearing and consistent with the expedited deadlines for completion of the case. Importantly, a board decision issued under these procedures has no precedential value.

The contract at issue in this “small claim” was between E&R Services and the Maryland Department of Transportation, State Highway Administration for road construction in Montgomery County. Under the contract, the selected contractor was to provide an “initial critical path method schedule” (known as an ICPM) within 20 days of the SHA’s issuance of a notice of award. On Oct. 5, 2020, the SHA sent a notice of award letter to E&R Services. However, E&R Services waited until April 6, 2021, to submit its first ICMP schedule to SHA.

E&R Services contended that it did not submit the ICMP schedule sooner because any such submission would have been speculative before certain other approvals were given – including, in particular, erosion and sediment control measures, which were not given until a meeting on March 29, 2021. The board rejected this contention, stating: what E&R Services “thought made good business sense and what the Contract required were at odds.” When such a conflict arises, the contract controls.

The board ultimately found that E&R Services’ “failure to timely submit its ICPM [was] the sole controlling reason for the delay in its ability to start construction.” Accordingly, the board ruled against E&R Services. Though it lost its case, by employing the expedited appeal procedures of COMAR, E&R Services was able to shorten the appeal process and get a final answer to its claim in a matter of months.

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