

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
State Procurement Regulations**  
(DLS Control No. 20-053)

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**Overview and Legal and Fiscal Impact**

The regulations alter procedural rules and requirements for proceedings before the Maryland State Board of Contract Appeals (Appeals Board).

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**State Procurement Regulations:**

Administrative and Civil Remedies:

Maryland State Board of Contract Appeals – General: COMAR 21.10.05.05 and .06

Maryland State Board of Contract Appeals – Procedures For Appealing Contract Disputes:  
COMAR 21.10.06.05, .12, and .27

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**Legal Analysis**

**Background**

The Appeals Board is an independent agency in the Executive Branch that consists of three full-time members qualified to serve in a quasi-judicial capacity and possessing thorough knowledge of procurement practices and processes. The chair and other members are appointed by the Governor with the advice and consent of the Senate. The Appeals Board adjudicates bid protests and contract disputes between State agencies and contractors or vendors doing business with the State. Matters involved in bid protests include the bidding process and other concerns relating to the formation of procurement contracts. Issues in contract disputes include the quality of performance, compliance with contract provisions, compensation, claims and change orders, and termination. Appeals Board decisions are subject to judicial review.

**Summary of Regulations**

The regulations update procedural rules and requirements for proceedings before the Appeals Board. Specifically, the regulations:

- Alter requirements for service of process to allow service of a subpoena on a party represented by an attorney to be made by service on the attorney;
- Establish procedural requirements for a party seeking enforcement of a subpoena or court order;
- Shorten the time period for a party to file a reply to a response to a written motion from 15 working days to 5 working days;
- Establish formatting and other technical requirements for replies;
- Authorize the Appeals Board, for a written order or motion, to state its decision on the record and issue a written opinion at a later date;
- Establish rules relating to motions for reconsideration; and
- Clarify when a ruling of the Appeals Board on a motion for reconsideration shall be deemed final.

The regulations also make various technical, clarifying, and stylistic changes, including moving provisions regarding challenges to the jurisdiction of the Appeals Board from COMAR 21.10.06.05 (which is repealed) into COMAR 21.10.05.06C (which relates more generally to motions to dismiss).

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Appeals Board cites §§ 12-101 and 15-201 through 15-223 of the State Finance and Procurement Article as authority for the regulations. Section 12-101 authorizes the Board of Public Works to implement the policies of Division II of the article by setting policy, adopting regulations, and establishing internal operational procedures. This section also authorizes the Board of Public Works to delegate any of its authority that it determines to be appropriate for delegation. Section 15-201 through 15-223 relate generally to the authority and responsibility of the Appeals Board. Among other things, these sections establish the Appeals Board (§ 15-205); establish the authority of the Appeals Board as to subpoenas, oaths, and testimony (§ 15-212); and establish procedures for dispute resolution (§§ 15-215 through 15-223). Section 15-210 specifically requires the Appeals Board to adopt regulations that “provide for informal, expeditious, and inexpensive resolution of appeals before the Appeals Board.”

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The board advises that there is no fiscal impact on State or local agencies because the regulations generally clarify and bring up to date existing regulations on the filing, hearing, and administration of appeals of the board's decisions. The Department of Legislative Services concurs that the regulations are technical and procedural in nature and, thus, have no fiscal effect.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The board advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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