

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1313 (Delegate Benson)
Commerce and Government Matters

**Procurement - Bid Protest and Contract Claim Appeals - Award of Attorney and
Expert Witness Fees**

This bill requires the Board of Contract Appeals to award reasonable attorney and expert witness fees to a contractor under a construction contract, a prospective bidder or offeror, a bidder, or an offeror, if the entity: (1) appeals the final action of an agency on a claim under a procurement contract or a protest; and (2) the board sustains the appeal.

Fiscal Summary

State Effect: Potential significant increase in general and special fund (Transportation Trust Fund) expenditures beginning in FY 2003 (could be in the hundreds of thousands of dollars).

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: The Board of Contract Appeals may award reasonable attorney fees to a contractor on a claim resulting from a construction contract if the board finds that the conduct of the procurement unit personnel in processing the claim is in bad faith or without substantial justification.

The board may not award attorney's fees to a prospective bidder or offeror, a bidder, or an offeror, but may award reasonable costs for filing and pursuing a protest if the board

sustains the appeal of a final decision from an agency for the protest and finds a violation of law or regulation.

Background: The Board of Contract Appeals advises that it typically sustains five contract disputes and two bid protests annually. The board has not awarded any attorney fees.

State Fiscal Effect: The Board of Contract Appeals advises that based on the current number of disputes sustained, general and special fund (Transportation Trust Fund) expenditures could increase by \$200,000 to \$300,000 annually beginning in fiscal 2003.

The Department of Transportation advises that general and special fund expenditures associated with legal expenses could increase by several hundred thousand dollars a year beginning in fiscal 2003.

In addition, the new State liability for attorney and expert witness fees may increase the number of bid protests and contract disputes, further increasing costs.

Additional Information

Prior Introductions: This bill was introduced in the 2001 legislative session as HB 1304, and had a hearing in the Commerce and Government Matters Committee. The bill was subsequently withdrawn.

Cross File: None.

Information Source(s): Board of Contract Appeals, Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2002
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