



House Bill 1166

Omnibus Procurement Reform Act ("OPRA") of 2023

MACo Position: **OPPOSE**

To: Health and Government Operations
Committee

Date: March 6, 2023

From: Brianna January

The Maryland Association of Counties (MACo) **OPPOSES** HB 1166. This bill would impose a strict, one-size-fits-all approach to multiple aspects of county procurement – including appeals processes – for any project that uses any state funding at all, no matter how small the amount. Ultimately, the bill poses multiple elements that would lead to an overburdened and unfair review process. Counties take issue with the extraordinarily high review standard for appeals, the assurance of attorneys' fees, and the oversight of state officials for a local process largely unfamiliar to them.

State/county collaboration on projects and services is routine, with the State frequently playing a lesser, or even ancillary, role in the funding of projects or functions delivered locally. Counties, when required to procure various requirements for such joint functions, are currently subject to substantial requirements promoting fairness and transparency. Bidders are afforded due process in all such systems.

Counties are particularly concerned with the provisions of HB 1166 that alter current policy on dispute resolution, greatly skewing in favor of the bidder. Simply put, the bill turns the current process upside down and allows contract disputes to be resolved in the forum the contractor chooses – a major shift in decades-old existing policy – that would greatly skew all dispute procedures against county governments.

This change in policy would apply to all appeals claims for cancellations of bids or requests for proposals, if even one cent of state funding is used in the project. To illustrate the breadth of this decree, it would include all public school construction projects completed in the state, all the way down to small-scale service where state funds played a minor complementary role for a county government. A plain reading of the bill's proposed language suggests these rules would even apply to projects where the State serves as a mere pass-through of federal funding – increasing its sweep even further.

While counties strive to have smooth and effective procurement processes, under certain circumstances, any procurement entity must cancel bids or requests for proposals for reasons outside of its control. Causes for this practice range from bidders far exceeding project capacity, unexpected cost effects (like the current supply chain crisis), or a need to clarify or reframe certain details of published requirements. No entity takes these steps lightly, but sometimes they are functionally necessary.

Furthermore, under the appeals system envisioned in HB 1166, the number of borderline or even frivolous protests and appeals filed by bidders and offerors would surely increase. Presumably, the majority of such cases would be brought under State appeals processes, at the request of the contractors under their new authority to do so under HB 1166. This will cost counties – and the State – both time and money as they execute procurement contracts and pursue critical projects or service partnerships.

The State becoming the default appellate entity for all such contracts – even those conducted with overwhelmingly local funds – would also reach beyond their own expertise and professional capacity, as the terms of a local procurement differ widely across jurisdictions. A months-long appeal over a remedial procurement change could significantly delay critical projects from coming to fruition, with great impact on the services delivered to the counties' and State's joint constituents. HB 1166 jeopardizes both the efficient functioning of procurements, and the assurance that the appellate entity is fully grounded

The approach suggested by HB 1166 would not suit the realities of county procurement and would usurp the efficient processes already in place, ultimately to the detriment of Marylanders and their taxpayer dollars. For these reasons, MACo **OPPOSES** HB 1166 and urges an **UNFAVORABLE** report.