

BILL: Senate Bill 667 - State Procurement -
Maryland State Board of Contract Appeals - Attorney's Fees

COMMITTEE: Senate Budget and Taxation

DATE: February 14, 2024

POSITION: Letter of Information

Upon review of Senate Bill 667 - State Procurement - Maryland State Board of Contract Appeals - Attorney's Fees, the Maryland Department of General Services (DGS) provides these comments for your consideration.

The bill extends the Maryland State Board of Contract Appeals (MSBCA) authority to award a prospective bidder or offeror reasonable costs of filing and pursuing a protest, including attorney's fees for all procurement contracts, if an appeal is sustained and there is a violation of law or regulation. This provision would also apply if the procurement unit personnel acted in bad faith, without justification, or in violation of law or regulation.

The Department of General Services (DGS) is concerned that passage of this bill would likely result in increased protests, appeals and contract claims due to the perception that bidders or offerors can recover the filing cost and attorney fees. Increased protests will require Procurement Officers to respond to the protest and delay award of procurement contracts. DGS handles an enormous volume of procurements and oversees a wide variety of procurements for Executive Branch Agencies, thus requiring additional Procurement Officer positions to comply with this legislation.

In most cases, procurement officers' decisions are upheld since they strive to adhere to laws and regulations while acting in good faith. In the unlikely event that reasonable costs and fees are awarded, the State would be responsible for the award payment, which would then be charged back to the agency.

For additional information, contact Ellen Robertson at Ellen.Robertson@maryland.gov or 410-260-2908 or Lisa Nissley at Lisa.Nissley1@maryland.gov or 410-260-2922.