
January 23, 2024

The Honorable Joseline A. Pena-Melnyk
Chair, Health and Government Operations Committee
House Office Building, Room 241
Annapolis, Maryland 21401

Re: Letter of Information – House Bill 292 – State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

Dear Chair Pena-Melnyk and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following letter of information for the Committee’s consideration on House Bill 292.

Currently, the Maryland State Board of Contract Appeals (MSBCA) may award costs of filing and pursuing a protest, *not* including attorney’s fees, to a prospective bidder or offeror, a bidder, or an offeror, when it sustains an appeal and finds that there has been a violation of law or regulation. House Bill 292 would *require* the MSBCA to award costs of filing and pursuing a protest, *including* attorney’s fees, when appeals are sustained.

Similarly, the MSBCA may currently award a contractor the costs of filing and pursuing a claim under a construction contract, *not* including attorney’s fees, if the Appeals Board finds that unit personnel acted in bad faith or without substantial justification when processing a contract claim. House Bill 292 would *require* the MSBCA to award costs of filing and pursuing a claim, including attorney’s fees, under these circumstances. Additionally, House Bill 292 would expand this provision from claims under construction contracts to claims under *all* contracts.

House Bill 292 has the potential to significantly impact MDOT operations and finances. These proposed changes will likely result in an increase of the filing of protests, appeals, and contract claims. More protests and appeals mean greater delays in the award of contracts and the start of work under those contracts, as well as increased litigation costs in defending these protests.

If House Bill 292 is enacted, offerors and bidders are more likely to retain attorneys from the time of bidding and throughout the life of the contract to look for grounds to protest or file contract claims, knowing that any successful protest or contract claim will result in the Board awarding those costs to the offeror, bidder, or contractor. Earlier engagement of attorneys will inevitably lead to an increased number of protests and contract claims, and increased defense costs. Notably, House Bill 292 does not allow the State to similarly be reimbursed for its costs related to defending against the protest, appeal or contract claim.

The Honorable Joseline A. Pena-Melnyk
Page Two

The MDOT looks forward to continued collaboration to ensure that our efforts to provide safe transportation infrastructure are also leveraged to support broader goals of economic development and equity in the State.

The Maryland Department of Transportation respectfully requests the Committee consider this information during its deliberations of House Bill 292.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090