

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 738

(Delegate Krebs)

Health and Government Operations

Education, Health, and Environmental Affairs

Jurisdiction of the State Ethics Commission and the Maryland State Board of
Contract Appeals - Participation in Procurement

This bill gives the Maryland State Board of Contract Appeals (MSBCA) jurisdiction to hear and decide appeals arising from the final action of a State procurement unit related to alleged violations of specified procurement ethics provisions; it repeals the State Ethics Commission's (SEC) jurisdiction to address alleged violations.

Fiscal Summary

State Effect: None. Both SEC and MSBCA indicate that any changes resulting from the transfer of jurisdiction have no material effect on their operations. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, an individual or a person employed by an individual who assists an Executive Branch procurement unit to draft specifications, an invitation for bids (IFB), or a request for proposals (RFP) for a procurement, or who assists in the selection or award made in response to an IFB or RFP, may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal.

The prohibition against submitting a bid or proposal does not apply to:

- providing descriptive literature or samples, whether solicited or unsolicited;
- submitting written or oral comments on a specification when comments are solicited from two or more persons as part of a request for information or a prebid or preproposal conference;
- providing specifications for a sole source procurement under State procurement law;
- providing architectural and engineering services for (1) programming, master planning, or other project planning services; (2) the design of a construction contract if design services do not involve lead or prime design responsibilities on behalf of the State and the construction contract has an anticipated value of between \$2.5 million and \$100.0 million; or (3) the payment to the design contractor does not exceed \$500,000; or
- comments solicited from two or more persons as part of a request for information for a procurement for health, human, social, or educational services.

Currently, violations of the procurement ethics provisions described above are under the jurisdiction of SEC; however, the bill transfers jurisdiction to MSBCA to consider appeals of actions taken by procurement units for alleged violations of these provisions, including violations related to the formation of architectural and engineering contracts, over which MSBCA otherwise lacks jurisdiction.

MSBCA 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 chairman and other members are appointed by the Governor with the advice and consent of the Senate. MSBCA 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. MSBCA decisions are subject to judicial review.

SEC, created in 1979, consists of five members and guards against improper influence on public officials or the appearance of conflict of interest through programs of financial disclosure, lobbying disclosure and regulation, approval of local government ethics requirements, ethics law advice and training, and ethics law complaint investigations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Contract Appeals, State Ethics Commission, Department of General Services, Department of Legislative Services

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