
February 14, 2024

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis MD 21401

Re: Letter of Information – Senate Bill 667 – State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following letter of information for the Committee’s consideration on Senate Bill 667.

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. Senate Bill 667 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. Senate Bill 667 would *require* the MSBCA to award costs of filing and pursuing a claim, including attorney’s fees, under these circumstances. Additionally, Senate Bill 667 would expand this provision from claims under construction contracts to claims under *all* contracts.

Senate Bill 667 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 Senate Bill 667 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, Senate Bill 667 does not allow the State to similarly be reimbursed for its costs related to defending against the protest, appeal or contract claim.

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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 Senate Bill 667.

Respectfully submitted,

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