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Pending Legislation in Maryland Could Eliminate Bid Protest Appeals [Ober|Kaler]

Authors: Joseph C. Kovars

March 06, 2014

On February 24, a bill was introduced in the Maryland House of Delegates which, if passed, will require a bid protester of a state contract to pay to the state up to 5% of the value of the contract on which it protested, if the protester loses an appeal of the protest in the Board of Contract Appeals ("Board").

HB 1488 was introduced at the request of the administration and several state agencies. The bill says that in an appeal from a decision of a unit on a bid protest, the party filing the appeal must simultaneously submit to the Board a protest appeal bond or other form of "acceptable" security. The bond must equal 5% of the estimated value of the contract being protested "including base term and options," unless the protester is a small business, as defined. If the party is a small business the bond must equal 1%. If the appeal is unsuccessful, the bond is forfeited to the State. There are no exceptions and the Board has no discretion. For example, a contract with an estimated value of \$50,000,000 would put at risk \$2,500,000. It is noteworthy that the risk of forfeiture is totally unrelated to the cost the State may incur in responding to a protest. It is simply a penalty for challenging the State.

If the legislation becomes law the chilling effect on filing legitimate protests cannot be overstated. Stated another way the legislation effectively removes the right to appeal the denial of a bid protest to the Board. With no effective right of appeal, there will be no adequate check on or accountability for abusive state action on a bid.

If you disagree with the proposed legislation we urge you to contact your legislators and lodge your objections.