

Bid protests happen quickly. Scott Livingston and the team at RWL are ready — at a moment's notice — to protect your rights under Maryland procurement law.

Maryland Procurement Law Alert

An “Interested Party” Has Rights in Maryland, And Needs to Assert Them

You spent weeks or months preparing a detailed proposal that shows you're the most qualified and reasonably priced offeror to the State. You've been selected for award. Congratulations! But wait—the Procurement Officer just told you that a disappointed offeror submitted a **bid protest**. *What did I do wrong? Did the agency screw something up? When can I start work on the contract, if at all?*

You are now an “interested party”—namely, “an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.” (See COMAR 21.10.02.01.) If you regularly compete for Maryland State contracts, the chances are that you'll encounter this scenario at some point. So, what should you do in this situation?

As an interested party in a Maryland State procurement, you have a number of rights, but you have to act quickly. First, you have the right to review the protest and any non-confidential information submitted with it. (See COMAR 21.10.02.07.) This is your opportunity to defend your position as the apparent awardee. Review the protest, and prepare a prompt response. Your response should convince the agency you're still the most advantageous offeror, and any allegations in the protest do not invalidate that determination. There is no hard timeline for the agency's decision, so you need

to submit your response without delay.

Second, if the agency denies the protest, you have the right to be notified of any MSBCA appeal and participate in that appeal. (See COMAR 21.10.07.03.) Procurement Officers deny the vast majority of protests, and protestors routinely appeal those denials. MSBCA appeals can move fast, sometimes holding dispositive hearings within a month of the agency's response to the appeal. Other times, the process can drag on for many months, significantly delaying your work.

Third, if the agency grants the protest, you have the right to appeal to the Maryland State Board of Contract Appeals ("MSBCA") within 10 days of that protest decision. *State Fin. & Proc. § 15-220(a); COMAR 21.10.02.10. Keep in mind that if you haven't already engaged counsel, the MSBCA requires parties to be represented by a Maryland attorney.*

Participation as an interested party is *crucial* to affecting eventual award in your favor. If you choose not to participate in the MSBCA process, you are placing your corporate destiny in someone else's hands. The State will defend their procurement action. Nonetheless, the State's interests are not perfectly aligned with yours—your company's contract is on the line, not the State's.

Keep in mind that an MSBCA appellant can seek discovery of records you have submitted to the agency, including your confidential correspondence with officials. If you are not there to defend your proposal and other submissions, it is possible they could be misconstrued or taken out of context. *You know best* how to explain the information you've submitted, particularly where that information discusses your past performance regarding similar procurement.

In any case, it is incumbent upon you as an interested party to defend your rights as an apparently successful awardee in Maryland procurement. By staying silent, you will significantly jeopardize your award.

*Don't let your competitors outsmart you when it comes to Maryland bid protests. **Scott Livingston, Esq.***

Give us a call at [301.951.0150](tel:301.951.0150) or send an [email](#) to find out how we can help.

The information in this publication should not be construed as legal advice about your rights and you should contact your attorney for legal advice.