



## Maryland Procurement Law ALERT

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### OTHER STATE TRIBUNALS UPHOLD PROCUREMENT INTEGRITY

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While the Maryland State Board of Contract Appeals (“MSBCA”) is generally the *primary* authority for disputes arising out of State procurements, it is not the only authority. Other administrative tribunals, outside of the jurisdiction of the MSBCA, interpret state procurement laws, rules and regulations. These opinions can be a source of education and are persuasive, if not binding, authority.

A recent opinion from Maryland State Board of Education (“MSBE”) in *AutoFlex Fleet, Inc. (“AutoFlex”) v. Montgomery County Board of Education*, Opinion No. 25-41 (Nov. 4, 2025) is a good example of such an opinion. It arose out of a bid protest. It, and other MSBE opinions, are available online at [www.marylandpublicschools.org](http://www.marylandpublicschools.org) website.

In *AutoFlex*, the MSBE overruled the decision by the Montgomery County Board of

Education which had ruled that the county school system acted reasonably in awarding an electric bus contract to “High Electric Trucking” (“HET”) back in 2020. Auto Flex, a disappointed offeror, protested this award, but, in 2021, the MSBE upheld the county decision and denied the protest.

AutoFlex filed a petition for judicial review to the Circuit Court. During the pendency of these proceedings, the *Washington Post* reported that police were investigating “financial improprieties” at the local board’s department of transportation. As a result of the investigation into financial improprieties, two of the four members of the evaluation panel for the *electric bus* contract were removed from their jobs, criminally prosecuted and ultimately pled guilty to the charges brought against them related to corruption on another Montgomery County Schools’ contract: namely, a diesel bus contract, where HET was a subcontractor.

Meanwhile, elsewhere, two school employees secretly withheld funds related to late fees and changes in the diesel bus contract. Rather than being returned to the county schools, the funds were wrongfully deposited in an “off-the-books” account. An investigation found that this misappropriation of funds totaled more than \$368,000 between 2016 and 2021. It was later learned, among other things, that HET shared a business address with the prime contractor on this diesel bus contract.

It was quite clear that misappropriating funds violated the diesel bus contract. Less clear, however, was what impact such misconduct by the two panel members had on their earlier evaluation of the proposals, including the favorable evaluation of HET, for the electric bus procurement. At the time of accepting the Evaluation Panel’s recommendation to award the electric bus contract to HET, the procurement officer had no hint of misconduct on the part of any evaluation panel members.

The Circuit Court affirmed the State Board’s decision to deny the protest and uphold the award of the electric bus contract to HET.

AutoFlex appealed to the Appellate Court of Maryland. The Appellate Court held, among other things, that the trial court had the authority to take judicial notice of certain facts outside of the original administrative record. These facts related to the local board's suspension and criminal investigations of two out of four individuals on the evaluation committee. It remanded the matter to Circuit Court with instructions that the lower court should remand the matter back to the MSBE for consideration of "what, if any, significance such evidence of the two members' misconduct on the diesel bus contract has for this [electric bus program] procurement which resulted contract award to HET and which resulted in AutoFlex's challenges to it."

The MSBE, in turn, ordered the Montgomery County Board to conduct further proceedings consistent with the Appellate Court's decision. The County Board, after submitting a letter which the MSBE rejected as conclusory and insufficient, submitted an investigative report supporting the award to HET.

AutoFlex objected to this report. The MSBE treated this objection as a new appeal, which led to the current opinion. The MSBE detailed some incongruencies and omissions in the county investigative report. This report, however, omitted scores from one of the two terminated evaluators. Only one of the non-terminated evaluators was interviewed. The MSBE found that HET, the complicit contractor on the diesel bus contract was a "partner and integral party" of HET's team and there was an indication that the illicit behavior from that contract would continue in the new contract procurement.

In sustaining AutoFlex's appeal, the MSBE found that there was an *appearance of impropriety* that it could not ignore in light of the purpose of "any government procurement system [to] ensure fairness among competitors, and provide best value to the government agencies spending taxpayer funds." The MSBE stated:

- Here, two out of four members of the RFP evaluation committee were local board employees who were convicted for actions involving violations of local board procurement and financial protocols, in a scheme that involved ABT, a named subcontractor/partner/ integral team member with which HET

shared business offices through at least January 31, 2025, (*i.e.*, the date of the local board letter partially terminating the HET contract for convenience)

...

- The participation of these [two] individuals tainted the bus procurement process such that no one can know what the outcome of the evaluation process would have been. In other words, no one can know the ‘real’ scores and real winner of the competition had this taint not existed. See *Yellow Transportation, MSBCA Docket Nos. 2374, 2380, 2381, 2382, & 2389, at page 29* (April 9, 2004).

Thus, at long last, Maryland State Board of Education reversed the administrative decision which erroneously upheld award of the contract to HET. Procurement integrity was protected. Based on the outcome of this case, it is clear that the MSBE has a very low tolerance for *appearance* of impropriety in contract awards.

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