

# HOUSE BILL 1488

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – Budget and Management) (By Request – Departmental – Transportation) (By Request – Departmental – General Services) (By Request – Departmental – Information Technology)**

Introduced and read first time: February 24, 2014

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Source Selection and Protest Appeals Procedures –**  
3 **Revisions**

4 FOR the purpose of clarifying that certain internal and external correspondence that a  
5 procurement office is required to maintain in a certain file is limited to  
6 correspondence that is relevant to the decision of the agency or unit; requiring  
7 that a party filing a certain appeal with the State Board of Contract Appeals  
8 simultaneously submit to the Board a certain bond or other form of acceptable  
9 security; requiring that a certain bond or other certain security be in a certain  
10 amount; requiring a unit to calculate the estimated value of a certain contract  
11 for a certain purpose; requiring that a certain bond or other certain security be  
12 deposited into the General Fund of the State under certain circumstances;  
13 requiring that a certain bond or other certain security be returned, under  
14 certain circumstances, to the party that submitted the bond or security;  
15 requiring the Board to dismiss a certain appeal under certain circumstances;  
16 requiring the Board to adopt certain regulations; requiring, in a certain appeal,  
17 the Board to request a unit, in conjunction with the Office of the Attorney  
18 General, to submit a certain report and furnish a copy of the report to certain  
19 persons; requiring, except under certain circumstances, a unit to submit a  
20 certain report within a certain time period; requiring that a certain report  
21 include certain documents and a certain statement; requiring that certain  
22 comments on a certain report or a certain rebuttal be filed with the Board  
23 within certain time periods; requiring a person that submits certain comments  
24 or a certain rebuttal to send a copy of the comments or rebuttal to certain  
25 persons; providing that the failure of a certain person to comply with certain  
26 time limits will result in the resolution of a certain appeal without consideration  
27 of certain comments or rebuttal; specifying the types of documents for which  
28 discovery may be requested in a certain appeal; authorizing a party in a certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 appeal to seek additional discovery on a certain motion; authorizing the Board  
2 to allow certain additional discovery on certain written findings; altering the  
3 number of days within which the Board must issue its final decision; and  
4 generally relating to the source selection and protest appeals procedures in  
5 State procurement.

6 BY repealing and reenacting, with amendments,  
7 Article – State Finance and Procurement  
8 Section 13–202 and 15–221  
9 Annotated Code of Maryland  
10 (2009 Replacement Volume and 2013 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – State Finance and Procurement**

14 13–202.

15 (a) After a solicitation is issued and until a recommendation is made by a  
16 procurement officer, a procurement officer may disclose to a person outside the  
17 Executive Department only:

18 (1) whether a decision has been made regarding a solicitation; and

19 (2) information that is available to the public under §§ 10–611 through  
20 10–628 of the State Government Article.

21 (b) After a solicitation is issued, a procurement officer shall record and  
22 include in the procurement file the following information from an inquiry from a  
23 source outside the Executive Department:

24 (1) the date and time of the inquiry;

25 (2) the name and affiliation of the person making the inquiry; and

26 (3) the substance and nature of the inquiry.

27 (c) A procurement officer shall maintain a file on each procurement that  
28 includes:

29 (1) a record of all inquiries required to be recorded under subsection  
30 (b) of this section;

31 (2) all written solicitations by an agency or unit;

32 (3) all offers received;

1 (4) all internal and external correspondence regarding the  
2 procurement **THAT IS RELEVANT TO THE DECISION OF THE AGENCY OR UNIT;**

3 (5) written documentation from the procurement officer describing  
4 efforts to confirm the information in the affidavits submitted by the successful bidder  
5 or offeror; and

6 (6) the final contract.

7 15–221.

8 (a) If a person appeals the decision of a unit about a protest, the Appeals  
9 Board shall:

10 (1) give that case priority over other matters not involving protests  
11 before the Appeals Board; and

12 (2) decide it expeditiously.

13 **(B) (1) (I) IN AN APPEAL FROM A DECISION OF A UNIT ABOUT A**  
14 **PROTEST, THE PARTY FILING THE APPEAL SHALL SIMULTANEOUSLY SUBMIT TO**  
15 **THE APPEALS BOARD A PROTEST APPEAL BOND OR OTHER FORM OF**  
16 **ACCEPTABLE SECURITY.**

17 **(II) THE AMOUNT OF THE PROTEST APPEAL BOND OR**  
18 **OTHER FORM OF ACCEPTABLE SECURITY REQUIRED UNDER SUBPARAGRAPH (I)**  
19 **OF THIS PARAGRAPH SHALL BE:**

20 **1. IF THE PARTY FILING THE APPEAL IS NOT A**  
21 **SMALL BUSINESS, AS DEFINED IN § 14–501(C) OF THIS ARTICLE, IN AN AMOUNT**  
22 **EQUAL TO 5% OF THE ESTIMATED VALUE OF THE CONTRACT BEING PROTESTED,**  
23 **INCLUDING BASE TERM AND OPTIONS; OR**

24 **2. IF THE PARTY IS A SMALL BUSINESS, AS DEFINED**  
25 **IN § 14–501(C) OF THIS ARTICLE, IN AN AMOUNT EQUAL TO 1% OF THE**  
26 **ESTIMATED VALUE OF THE CONTRACT BEING PROTESTED, INCLUDING BASE**  
27 **TERM AND OPTIONS.**

28 **(III) FOR THE PURPOSE OF DETERMINING THE AMOUNT OF A**  
29 **PROTEST APPEAL BOND OR OTHER FORM OF ACCEPTABLE SECURITY UNDER**  
30 **SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE UNIT SHALL CALCULATE THE**  
31 **ESTIMATED VALUE OF THE CONTRACT, INCLUDING BASE TERM AND OPTIONS.**

1           **(2) (I) IF THE APPEALS BOARD AFFIRMS THE UNIT'S**  
2 **PROCUREMENT DECISION OR THE APPEAL IS OTHERWISE DISMISSED, THE**  
3 **PROTEST APPEAL BOND OR OTHER FORM OF ACCEPTABLE SECURITY SHALL BE**  
4 **DEPOSITED INTO THE GENERAL FUND OF THE STATE.**

5           **(II) IF THE APPEALS BOARD RULES IN FAVOR OF THE**  
6 **PROTESTOR OR REMANDS THE PROCUREMENT DECISION TO THE UNIT, THE**  
7 **PROTEST APPEAL BOND OR OTHER FORM OF ACCEPTABLE SECURITY SHALL BE**  
8 **RETURNED TO THE PARTY THAT SUBMITTED THE BOND OR SECURITY.**

9           **(3) IF THE PARTY FILING THE APPEAL FAILS TO**  
10 **SIMULTANEOUSLY SUBMIT A PROPER PROTEST APPEAL BOND OR OTHER**  
11 **ACCEPTABLE FORM OF SECURITY AS REQUIRED BY PARAGRAPH (1) OF THIS**  
12 **SUBSECTION, THE BOARD SHALL DISMISS THE APPEAL.**

13           **(4) THE APPEALS BOARD SHALL ADOPT REGULATIONS**  
14 **IMPLEMENTING THIS SUBSECTION, INCLUDING REGULATIONS THAT IDENTIFY**  
15 **THE FORM OF AN ACCEPTABLE PROTEST APPEAL BOND OR OTHER SECURITY.**

16           **(C) (1) IN AN APPEAL FROM A DECISION OF A UNIT ON A PROTEST,**  
17 **THE APPEALS BOARD SHALL REQUEST THE UNIT, IN CONJUNCTION WITH THE**  
18 **OFFICE OF THE ATTORNEY GENERAL, TO:**

19                   **(I) SUBMIT A COMPLETE REPORT ON THE ACTIONS TAKEN**  
20 **BY THE UNIT WITH REGARD TO THE SOLICITATION INVOLVED IN THE APPEAL;**  
21 **AND**

22                   **(II) FURNISH A COPY OF THE REPORT TO THE PROTESTER**  
23 **AND ANY OTHER INTERESTED PARTIES.**

24           **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
25 **PARAGRAPH, IF THE APPEALS BOARD REQUESTS A REPORT UNDER PARAGRAPH**  
26 **(1) OF THIS SUBSECTION, THE UNIT SHALL SUBMIT THE REPORT WITHIN 30**  
27 **DAYS AFTER THE RECEIPT OF THE APPEALS BOARD'S REQUEST OR THE**  
28 **APPEALS BOARD'S DECISION ON A DISPOSITIVE MOTION, WHICHEVER IS LATER.**

29           **(II) IF THE UNIT DEMONSTRATES THAT EXTRAORDINARY**  
30 **CIRCUMSTANCES WOULD PREVENT A TIMELY SUBMISSION, THE APPEALS**  
31 **BOARD MAY EXTEND THE TIME WITHIN WHICH THE UNIT IS REQUIRED TO**  
32 **SUBMIT THE REPORT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

33           **(3) (I) THE REPORT SUBMITTED UNDER PARAGRAPH (1)(I) OF**  
34 **THIS SUBSECTION SHALL INCLUDE:**

1           **1. COPIES OF THE FOLLOWING DOCUMENTS OR**  
2 **PORTIONS OF THE DOCUMENTS TO THE EXTENT THE DOCUMENTS OR PORTIONS**  
3 **OF THE DOCUMENTS ARE RELEVANT TO THE ISSUES RAISED IN THE PROTEST**  
4 **AND ARE DISCOVERABLE UNDER SUBSECTIONS (E) AND (F) OF THIS SECTION:**

5           **A. THE BID OR OFFER SUBMITTED BY THE**  
6 **PROTESTER AND THE BID OR OFFER THAT IS BEING CONSIDERED FOR AWARD**  
7 **OR WHICH HAS RESULTED IN AN AWARD;**

8           **B. THE SOLICITATION;**

9           **C. THE ABSTRACT OF BIDS;**

10          **D. THE PROCUREMENT FILE; AND**

11          **E. ANY OTHER DOCUMENTS THAT ARE RELEVANT TO**  
12 **THE SPECIFIC ISSUES RAISED IN THE APPEAL; AND**

13          **2. A STATEMENT THAT:**

14           **A. SETS FORTH THE FINDINGS, ACTIONS, AND**  
15 **RECOMMENDATIONS IN THE MATTER, TOGETHER WITH ANY ADDITIONAL**  
16 **EVIDENCE OR INFORMATION THE UNIT DEEMS NECESSARY IN DETERMINING**  
17 **THE VALIDITY OF THE APPEAL; AND**

18           **B. IS FULLY RESPONSIVE TO THE ALLEGATIONS SET**  
19 **FORTH IN THE PROTEST.**

20           **(4) (I) COMMENTS BY A PROTESTOR OR ANY OTHER**  
21 **INTERESTED PARTY ON A REPORT SUBMITTED UNDER PARAGRAPH (2) OF THIS**  
22 **SUBSECTION SHALL BE FILED WITH THE APPEALS BOARD WITHIN 10 DAYS**  
23 **AFTER THE PERSON SUBMITTING THE COMMENTS RECEIVES THE REPORT.**

24           **(II) ANY REBUTTAL TO THE COMMENTS SUBMITTED UNDER**  
25 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE FILED WITH THE APPEALS**  
26 **BOARD WITHIN 5 DAYS AFTER THE PERSON SUBMITTING THE REBUTTAL**  
27 **RECEIVES THE COMMENTS TO WHICH THE REBUTTAL IS DIRECTED.**

28           **(III) A PERSON THAT SUBMITS COMMENTS UNDER**  
29 **SUBPARAGRAPH (I) OF THIS PARAGRAPH OR A REBUTTAL UNDER**  
30 **SUBPARAGRAPH (II) OF THIS PARAGRAPH TO THE APPEALS BOARD SHALL SEND**  
31 **A COPY OF THE COMMENTS TO:**

- 1                   1.     **THE OFFICE OF THE ATTORNEY GENERAL;**
- 2                   2.     **THE UNIT THAT FURNISHED THE REPORT;**
- 3                   3.     **IF THE PERSON SUBMITTING THE COMMENTS IS**  
4 **NOT THE PROTESTOR, THE PROTESTOR; AND**
- 5                   4.     **OTHER INTERESTED PARTIES.**

6                   **(IV) THE FAILURE OF A PROTESTER OR ANY OTHER**  
7 **INTERESTED PARTY TO COMPLY WITH THE TIME LIMITS IN SUBPARAGRAPH (I)**  
8 **OR (II) OF THIS PARAGRAPH SHALL RESULT IN RESOLUTION OF THE APPEAL**  
9 **WITHOUT CONSIDERATION OF THE UNTIMELY FILED COMMENTS OR REBUTTAL.**

10                   **(V) THE UNIT MAY SUBMIT A REBUTTAL TO COMMENTS**  
11 **SUBMITTED TO THE APPEALS BOARD UNDER SUBPARAGRAPH (I) OF THIS**  
12 **PARAGRAPH IF THE REBUTTAL IS FILED WITHIN 5 DAYS AFTER THE UNIT**  
13 **RECEIVES THE COMMENTS TO WHICH THE REBUTTAL IS DIRECTED.**

14                   **[(b)] (D)**     (1)     For any appeal, the Appeals Board may require each party  
15 to file a brief.

16                   (2)     If briefs are required, the Appeals Board shall establish the order  
17 and time limits for filing briefs after consultation with both parties.

18                   **[(c)] (E)**     Except as provided in subsection **[(d)] (F)** of this section, in a case  
19 before the Appeals Board, a party may obtain discovery about any matter that:

20                   (1)     is not privileged; and

21                   (2)     is relevant to the subject matter involved in that case.

22                   **[(d)] (F)**     **(1)**     In an appeal from a decision about a protest, discovery shall  
23 be limited to requests for the production of documents **THAT:**

24                   **(I) ARE NOT PRIVILEGED;**

25                   **(II) DO NOT CONTAIN CONFIDENTIAL COMMERCIAL**  
26 **INFORMATION PROTECTED UNDER § 10-617(D) OF THE STATE GOVERNMENT**  
27 **ARTICLE; AND**

28                   **(III) ARE RELEVANT TO THE SPECIFIC ISSUES RAISED IN THE**  
29 **APPEAL.**

1                   **(2) (I) IN AN APPEAL FROM A DECISION ABOUT A PROTEST, A**  
2 **PARTY MAY SEEK ADDITIONAL DISCOVERY ON A MOTION THAT SPECIFICALLY**  
3 **IDENTIFIES:**

4                               **1. THE ADDITIONAL DISCOVERY SOUGHT;**

5                               **2. THE ISSUES TO WHICH THE ADDITIONAL**  
6 **DISCOVERY IS RELEVANT; AND**

7                               **3. THE REASONS WHY DOCUMENTS ALREADY**  
8 **AVAILABLE ARE INADEQUATE TO ESTABLISH A MATERIAL ISSUE IN THE CASE.**

9                               **(II) [unless the] THE Appeals Board [determines] MAY ALLOW**  
10 **ADDITIONAL DISCOVERY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH ON A**  
11 **WRITTEN FINDING that extraordinary circumstances require THE additional limited**  
12 **discovery to avoid substantial unfairness or prejudice.**

13                   **[(e)] (G) [In an appeal from a decision about a contract claim, unless]**  
14 **UNLESS both parties agree to a longer period, the Appeals Board shall issue its final**  
15 **decision within [180] 90 days after the day on which:**

16                               (1) all briefs have been filed; or

17                               (2) if later, the record has been closed.

18                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 June 1, 2014.