
By: Delegates Anderson, Aumann, Benson, Carter, Kelley, Quinter, Stocksdale, F. Turner, and Vaughn Vaughn, Bates, Boutin, Bromwell, Costa, Donoghue, Hammen, Haynes, Hurson, McDonough, Morhaim, Murray, Oaks, Redmer, Rosenberg, Rudolph, Smigiel, V. Turner, and Weldon

Introduced and read first time: February 5, 2003
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Bid Protest and Contract Claim Appeals -- Award of Attorney**
3 **and Expert Witness Fees Contract Claim Disputes - Alternative Dispute**
4 **Resolution Pilot Program**

5 FOR the purpose of ~~requiring the Board of Contract Appeals to award attorney and~~
6 ~~expert witness fees to a prospective bidder, prospective offeror, bidder, or an~~
7 ~~offeror under certain circumstances; and requiring the Board of Contract~~
8 ~~Appeals to award attorney and expert witness fees to a contractor under certain~~
9 ~~circumstances requiring certain primary procurement units to develop and~~
10 ~~implement a certain alternative dispute resolution pilot program; providing that~~
11 ~~the pilot program applies only to claims by certain small businesses and~~
12 ~~minority business enterprises; requiring the pilot program to allow a party to~~
13 ~~elect to proceed without representation by an attorney; defining certain terms;~~
14 ~~requiring the primary procurement units to report to the General Assembly on~~
15 ~~or before a certain date; and generally relating to an alternative dispute~~
16 ~~resolution pilot program for procurement contract claim disputes.~~

17 ~~BY repealing and reenacting, with amendments,~~
18 ~~Article State Finance and Procurement~~
19 ~~Section 15-221.1 and 15-221.2~~
20 ~~Annotated Code of Maryland~~
21 ~~(2001 Replacement Volume and 2002 Supplement)~~

22 BY adding to

1 Article - State Finance and Procurement
 2 Section 15-224
 3 Annotated Code of Maryland
 4 (2001 Replacement Volume and 2002 Supplement)

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

7 **Article - State Finance and Procurement**

8 ~~15-221.1.~~

9 (a) ~~The Board of Contract Appeals [may] SHALL award a prospective bidder~~
 10 ~~or offeror, a bidder, or an offeror the reasonable costs of filing and pursuing a protest,~~
 11 ~~[not] including [attorney's] ATTORNEY AND EXPERT WITNESS fees, if:~~

12 (1) ~~the prospective bidder or offeror, bidder, or offeror appeals the final~~
 13 ~~action of an agency on a protest; AND~~

14 (2) ~~the Board of Contract Appeals sustains the appeal; and~~

15 (3) ~~the Board of Contract Appeals finds that there has been a violation of~~
 16 ~~law or regulation].~~

17 (b) ~~The Board of Contract Appeals shall adopt regulations to implement this~~
 18 ~~section and to determine what constitutes reasonable [costs of filing and pursuing a~~
 19 ~~protest] FEES.~~

20 ~~15-221.2.~~

21 (a) ~~[This section only applies to a claim resulting under a contract for~~
 22 ~~construction.~~

23 (b) ~~The Appeals Board [may] SHALL award to a contractor the reasonable~~
 24 ~~costs of filing and pursuing a claim, including reasonable attorney AND EXPERT~~
 25 ~~WITNESS fees, if [the Appeals Board finds that the conduct of unit personnel in~~
 26 ~~processing a contract claim is in bad faith or without substantial justification:].~~

27 (1) ~~THE CONTRACTOR APPEALS THE FINAL ACTION OF AN AGENCY ON A~~
 28 ~~CLAIM UNDER A PROCUREMENT CONTRACT; AND~~

29 (2) ~~THE APPEALS BOARD SUSTAINS THE APPEAL.~~

30 [(c)] (B) ~~The Appeals Board shall adopt regulations to implement this section~~
 31 ~~AND TO DETERMINE WHAT CONSTITUTES REASONABLE FEES.~~

32 15-224.

33 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 34 INDICATED.

1 (2) "MINORITY BUSINESS ENTERPRISE" HAS THE MEANING STATED IN §
2 14-301 OF THIS ARTICLE.

3 (3) "SMALL BUSINESS" MEANS A BUSINESS THAT QUALIFIES AS A SMALL
4 BUSINESS UNDER § 14-203 OF THIS ARTICLE.

5 (B) THE PRIMARY PROCUREMENT UNITS SHALL DEVELOP AND IMPLEMENT
6 AN ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM FOR THE RESOLUTION OF
7 CLAIMS UNDER PROCUREMENT CONTRACTS.

8 (C) THE ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM SHALL APPLY
9 ONLY TO CLAIMS BY SMALL BUSINESSES AND MINORITY BUSINESS ENTERPRISES.

10 (D) THE PILOT PROGRAM SHALL PROVIDE FOR AN ELECTION BY A PARTY TO
11 PROCEED WITHOUT REPRESENTATION BY AN ATTORNEY.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the primary procurement
13 units shall report to the General Assembly on or before October 1, 2005, in accordance
14 with § 2-1246 of the State Government Article, on the effectiveness and fiscal impact
15 of, and recommendations about, the alternative dispute resolution pilot program
16 established under Section 1 of this Act.

17 ~~SECTION 2. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 2003.