Unofficial Copy P2 2004 Regular Session 4lr1508 CF 4lr0818

By: Delegates Morhaim and Weldon

Introduced and read first time: February 6, 2004 Assigned to: Health and Government Operations

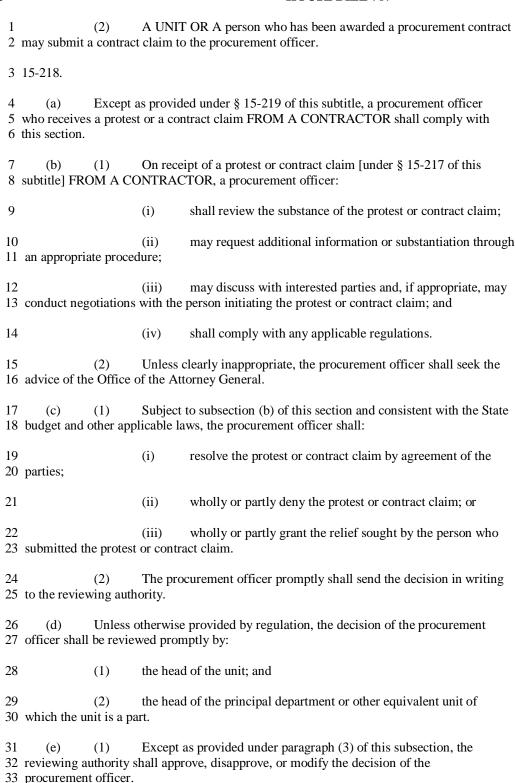
A BILL ENTITLED

1 AN ACT concerning

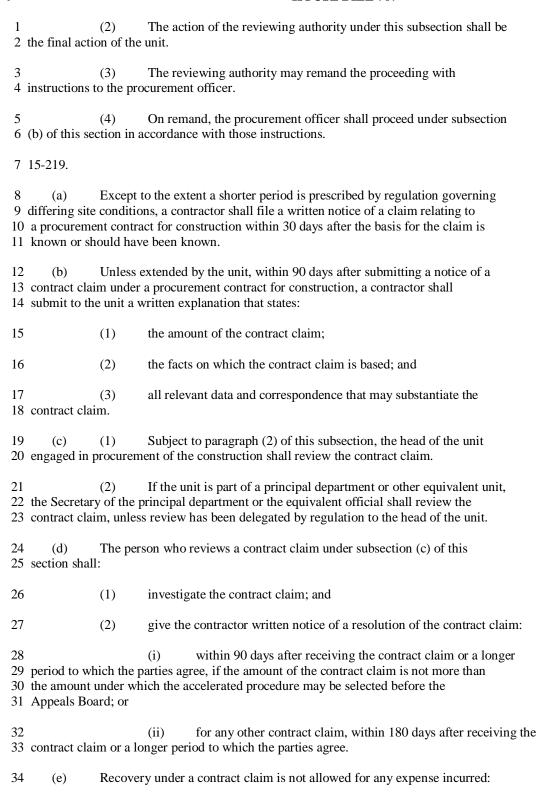
2 Procurement - Board of Contract Appeals - Jurisdiction over State Claims

- 3 FOR the purpose of authorizing an interested party to appeal a final action on a
- 4 procurement contract claim made by a State agency to the State Board of
- 5 Contract Appeals; altering the jurisdiction of the Appeals Board; clarifying that
- 6 certain claims procedures for a procurement contract apply only to a claim by a
- 7 contractor; establishing certain contract claims procedures for a State contract
- 8 claim; requiring a State contract claim to include certain information; requiring
- 9 the procurement officer to review a State contract claim; authorizing the
- 10 procurement officer to request additional information or to discuss or negotiate
- a State contract claim with the State agency or the contractor; requiring the
- procurement officer to prepare a proposed decision on a State contract claim
- under certain circumstances; requiring a procurement officer to include certain
- information and the supporting rationale in a proposed decision; providing for
- review of a proposed decision by certain persons under certain circumstances;
- authorizing a reviewing authority to approve, disapprove, or modify a proposed
- 17 decision; establishing that approval, disapproval, or modification of a proposed
- decision by the reviewing authority constitutes the final action of the State
- agency on the contract claim; authorizing a reviewing authority to remand with
- 20 instructions a disapproved proposed decision to the procurement officer;
- 21 authorizing the award of interest to a State agency under a procurement
- 22 contract claim; and generally relating to the authority of the State Board of
- 23 Contract Appeals over a procurement contract claim made by a State agency.
- 24 BY repealing and reenacting, without amendments,
- 25 Article State Finance and Procurement
- 26 Section 15-201, 15-215(b), and 15-219
- 27 Annotated Code of Maryland
- 28 (2001 Replacement Volume and 2003 Supplement)
- 29 BY repealing and reenacting, with amendments,
- 30 Article State Finance and Procurement
- 31 Section 15-211, 15-217(a), 15-218, 15-220(a), and 15-222(a) and (b)
- 32 Annotated Code of Maryland

1	(2001 R	teplaceme	ent Volui	me and 2003 Supplement)			
2 3 4 5 6	Section 15-219.1 Annotated Code of Maryland						
7 8				CTED BY THE GENERAL ASSEMBLY OF of Maryland read as follows:			
9				Article - State Finance and Procurement			
10	15-201.						
11 12	In this s Appeals.	ubtitle, ".	Appeals l	Board" means the Maryland State Board of Contract			
13	15-211.						
14 15	(a) arising from			ard shall have jurisdiction to hear and decide all appeals f a unit:			
16		(1)	on a pro	otest relating to the formation of a procurement contract; or			
17 18	contract clai	(2) im BY A	except f	For a contract claim relating to a lease of real property, on a ACTOR OR A UNIT concerning:			
19			(i)	breach;			
20			(ii)	performance;			
21			(iii)	modification; or			
22			(iv)	termination.			
23	(b)	A decisi	on of the	e Appeals Board is final, subject to any judicial review.			
24	15-215.						
25 26	(b) contract.	(1)	"Contra	act claim" means a claim that relates to a procurement			
27 28	modification	(2) n, or term		act claim" includes a claim about the performance, breach, of the procurement contract.			
29	15-217.						
30 31	(a) protest to th	(1) e procure		pective bidder or offeror, a bidder, or an offeror may submit a ficer.			



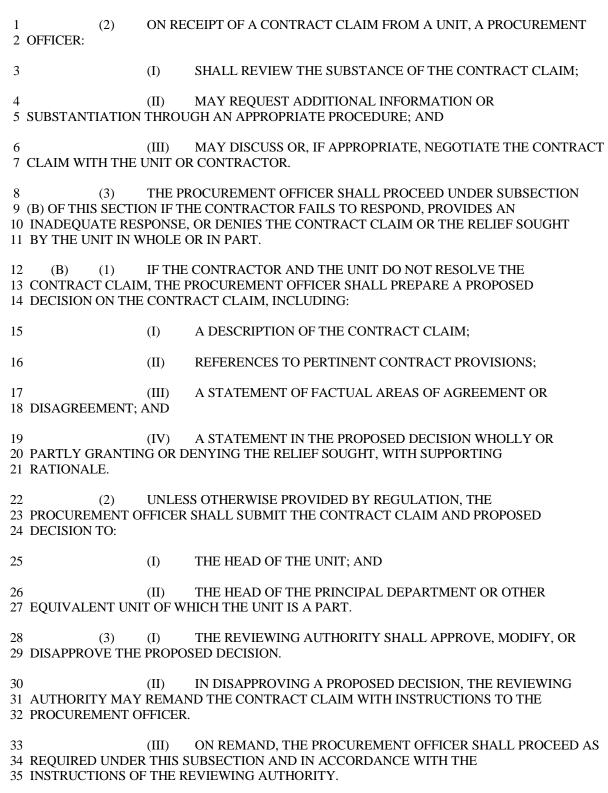
HOUSE BILL 767



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1 2	(1) claim under subse		an 30 days before the required submission of a notice of a his section; or			
	(2) unless the time for submission of a claim is extended under subsection (b) of this section, more than 120 days before the required submission of the claim.					
	(f) (1) If the unit determines that it is responsible for a portion but not all of the amount claimed by the contractor, subject to the terms of the contract, the unit shall pay the undisputed amount.					
9	(2)	Paymen	at of the undisputed amount:			
10		(i)	is not an admission of the liability of the unit on the claims; and			
11 12	is determined that	(ii) at the determi	does not preclude recovery of the amount paid if it subsequently nation of the unit was not correct.			
13 14	(g) (1) A decision not to pay a contract claim is a final action for the purpose of appeal to the Appeals Board.					
	(2) The failure to reach a decision within the time required under subsection (c) of this section may be deemed, at the option of the contractor, to be a decision not to pay the contract claim.					
18	(h) At the time of final payment, the unit shall:					
19	(1)	release	the retainage due to the contractor; and			
20	(2)	pay any	interest that:			
21 22	semifinal estima	(i) te; and	has accrued on the retainage from the time of payment of the			
23		(ii)	is due and payable to the contractor.			
24	15-219.1.					
		TTEN NOTI	T MAY ASSERT A CONTRACT CLAIM AGAINST A CONTRACTOR BY CE TO THE CONTRACTOR AND THE PROCUREMENT OFFICER			
28		(I)	THE BASIS FOR THE CONTRACT CLAIM;			
29 30	OR OTHER AC	(II) TION, REQU	TO THE EXTENT KNOWN, THE AMOUNT, OR THE PERFORMANCE JESTED BY THE UNIT IN THE CONTRACT CLAIM; AND			
31	DDOVIDE A W	(III)	THE DATE BY WHICH THE CONTRACTOR IS REQUIRED TO SPONSE TO THE CONTRACT CLAIM.			

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- 1 (4) THE DECISION OF THE REVIEWING AUTHORITY IS THE FINAL 2 ACTION OF THE UNIT.
- 3 15-220.
- 4 (a) Except for a contract claim related to a lease for real property, a bidder or 5 offeror, a prospective bidder or offeror, A UNIT, or a contractor may appeal the final
- 6 action of a unit to the Appeals Board.
- 7 15-222.
- 8 (a) Notwithstanding any provision of a procurement contract, the Appeals
- 9 Board may award interest on money that the Appeals Board determines to be due to
- 10 the UNIT OR THE contractor under a contract claim.
- 11 (b) Subject to paragraph (2) of this subsection, interest may accrue from
- 12 a day that the Appeals Board determines to be fair and reasonable after hearing all
- 13 the facts until the day of the decision by the Appeals Board.
- 14 (2) Interest may not accrue before the procurement officer receives a
- 15 contract claim from the UNIT OR THE contractor.
- 16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 17 October 1, 2004.