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By: Delegates Morhaim and Weldon, Weldon, Hurson, Hammen, Benson, Boteler, Boutin, Costa, Donoghue, Elliott, Goldwater, Hubbard, Kach, Mandel, McDonough, Murray, Nathan-Pulliam, Oaks, Pendergrass, Rosenberg, Rudolph, Smigiel, and V. Turner

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2004

CHAPTER____

1 AN ACT concerning

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

- FOR the purpose of authorizing an interested party to appeal a final action on a
- procurement contract claim made by a State agency to the State Board of 4
- Contract Appeals; altering the jurisdiction of the Appeals Board; clarifying that 5
- 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
- the procurement officer to review a State contract claim; authorizing the 9
- 10 procurement officer to request additional information or to discuss or negotiate
- 11 a State contract claim with the State agency or the contractor; requiring the
- 12 procurement officer to prepare a proposed decision on a State contract claim
- 13 under certain circumstances; requiring a procurement officer to include certain
- information and the supporting rationale in a proposed decision; providing for 14
- 15 review of a proposed decision by certain persons under certain circumstances; authorizing a reviewing authority to approve, disapprove, or modify a proposed 16
- decision; establishing that approval, disapproval, or modification of a proposed 17
- 18 decision by the reviewing authority constitutes the final action of the State 19 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
- contract claim; and generally relating to the authority of the State Board of 22
- 23 Contract Appeals over a procurement contract claim made by a State agency.
- 24 BY repealing and reenacting, without amendments,

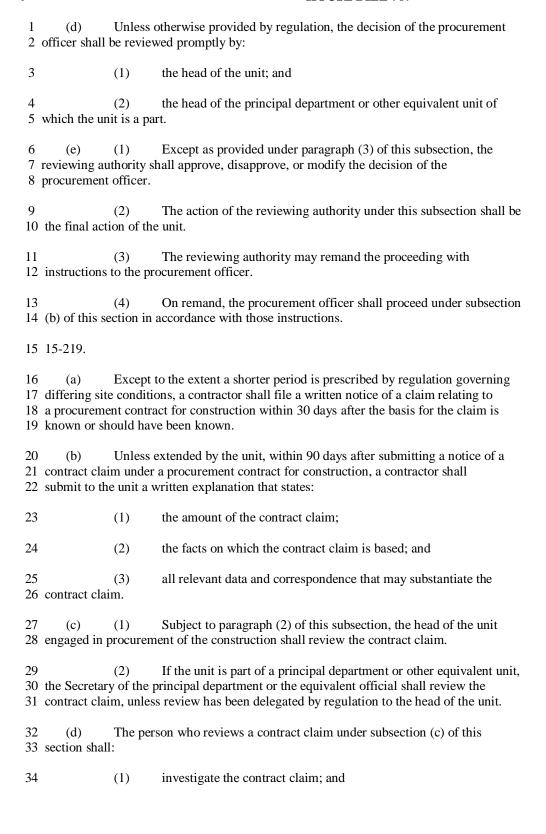
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(b)

1 Article - State Finance and Procurement 2 Section 15-201, 15-215(b), and 15-219 3 Annotated Code of Maryland (2001 Replacement Volume and 2003 Supplement) 4 5 BY repealing and reenacting, with amendments, Article - State Finance and Procurement 6 Section 15-211, 15-217(a), 15-218, 15-220(a), and 15-222(a) and (b) 7 8 Annotated Code of Maryland 9 (2001 Replacement Volume and 2003 Supplement) 10 BY adding to Article - State Finance and Procurement 11 12 Section 15-219.1 13 Annotated Code of Maryland 14 (2001 Replacement Volume and 2003 Supplement) 15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 16 MARYLAND, That the Laws of Maryland read as follows: 17 **Article - State Finance and Procurement** 18 15-201. In this subtitle, "Appeals Board" means the Maryland State Board of Contract 19 20 Appeals. 21 15-211. 22 The Appeals Board shall have jurisdiction to hear and decide all appeals 23 arising from the final action of a unit: 24 (1) on a protest relating to the formation of a procurement contract; or except for a contract claim relating to a lease of real property, on a 26 contract claim BY A CONTRACTOR OR A UNIT concerning: 27 (i) breach; 28 (ii) performance; modification; or 29 (iii) 30 (iv) termination.

A decision of the Appeals Board is final, subject to any judicial review.

1	15-215.			
2 3	(b) contract.	(1)	"Contrac	ct claim" means a claim that relates to a procurement
4 5	modification	(2) , or termi		ct claim" includes a claim about the performance, breach, the procurement contract.
6	15-217.			
7 8	(a) protest to the	(1) procurer		ective bidder or offeror, a bidder, or an offeror may submit a cer.
9 10	may submit	(2) a contrac		OR A person who has been awarded a procurement contract of the procurement officer.
11	15-218.			
	()			ed under § 15-219 of this subtitle, a procurement officer ntract claim FROM A CONTRACTOR shall comply with
15 16	(-)	(1) OM A CO		opt of a protest or contract claim [under § 15-217 of this CTOR, a procurement officer:
17			(i)	shall review the substance of the protest or contract claim;
18 19	an appropria	ite proced	(ii) lure;	may request additional information or substantiation through
20 21		otiations	(iii) with the	may discuss with interested parties and, if appropriate, may person initiating the protest or contract claim; and
22			(iv)	shall comply with any applicable regulations.
23 24	advice of the	(2) e Office o		clearly inappropriate, the procurement officer shall seek the orney General.
25 26	(c) budget and c	(1) other appl		to subsection (b) of this section and consistent with the State ws, the procurement officer shall:
27 28	parties;		(i)	resolve the protest or contract claim by agreement of the
29			(ii)	wholly or partly deny the protest or contract claim; or
30 31	submitted th	e protest	(iii) or contra	wholly or partly grant the relief sought by the person who act claim.
32 33	to the review	(2) ving auth		curement officer promptly shall send the decision in writing



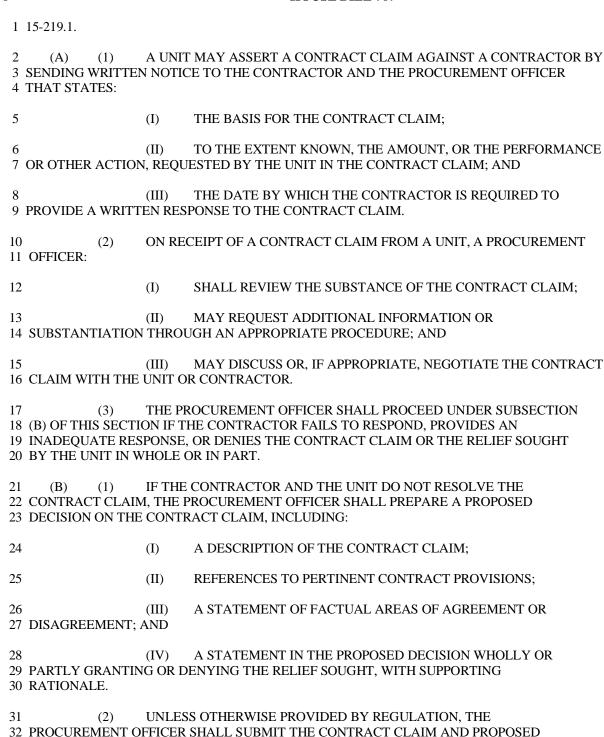
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1		(2)	give the	contractor written notice of a resolution of the contract claim:			
4		ınder whi		within 90 days after receiving the contract claim or a longer ee, if the amount of the contract claim is not more than celerated procedure may be selected before the			
6 7	contract clair	m or a lor	(ii) nger perio	for any other contract claim, within 180 days after receiving the od to which the parties agree.			
8	(e)	Recover	y under a	a contract claim is not allowed for any expense incurred:			
9 10	claim under	(1) subsection		an 30 days before the required submission of a notice of a this section; or			
	subsection (the claim.	(2) b) of this		ne time for submission of a claim is extended under more than 120 days before the required submission of			
		(1) If the unit determines that it is responsible for a portion but not all of t claimed by the contractor, subject to the terms of the contract, the unit he undisputed amount.					
17		(2)	Paymen	t of the undisputed amount:			
18			(i)	is not an admission of the liability of the unit on the claims; and			
19 20	is determine	ed that the	(ii) e determin	does not preclude recovery of the amount paid if it subsequently nation of the unit was not correct.			
21 22	(g) of appeal to	(1) the Appe	A decision not to pay a contract claim is a final action for the purpose Appeals Board.				
		(2) The failure to reach a decision within the time required under ection (c) of this section may be deemed, at the option of the contractor, to be a sion not to pay the contract claim.					
26	(h)	At the ti	the time of final payment, the unit shall:				
27		(1)	release t	he retainage due to the contractor; and			
28		(2)	pay any	interest that:			
29 30	semifinal es	timate; aı	(i) nd	has accrued on the retainage from the time of payment of the			
31			(ii)	is due and payable to the contractor.			

33 DECISION TO:

(I)

34



THE HEAD OF THE UNIT; AND

26

27 October 1, 2004.

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1 (II)THE HEAD OF THE PRINCIPAL DEPARTMENT OR OTHER 2 EQUIVALENT UNIT OF WHICH THE UNIT IS A PART. THE REVIEWING AUTHORITY SHALL APPROVE, MODIFY, OR (I) 4 DISAPPROVE THE PROPOSED DECISION. IN DISAPPROVING A PROPOSED DECISION, THE REVIEWING (II)6 AUTHORITY MAY REMAND THE CONTRACT CLAIM WITH INSTRUCTIONS TO THE 7 PROCUREMENT OFFICER. ON REMAND, THE PROCUREMENT OFFICER SHALL PROCEED AS 8 (III)9 REQUIRED UNDER THIS SUBSECTION AND IN ACCORDANCE WITH THE 10 INSTRUCTIONS OF THE REVIEWING AUTHORITY. (4) THE DECISION OF THE REVIEWING AUTHORITY IS THE FINAL 12 ACTION OF THE UNIT. 13 15-220. 14 Except for a contract claim related to a lease for real property, a bidder or (a) 15 offeror, a prospective bidder or offeror, A UNIT, or a contractor may appeal the final 16 action of a unit to the Appeals Board. 17 15-222. 18 (a) Notwithstanding any provision of a procurement contract, the Appeals 19 Board may award interest on money that the Appeals Board determines to be due to 20 the UNIT OR THE contractor under a contract claim. 21 Subject to paragraph (2) of this subsection, interest may accrue from (b) (1) 22 a day that the Appeals Board determines to be fair and reasonable after hearing all 23 the facts until the day of the decision by the Appeals Board. 24 Interest may not accrue before the procurement officer receives a (2) 25 contract claim from the UNIT OR THE contractor.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect