
By: Delegates Weldon and Morhaim, Morhaim, Hurson, Hammen, Benson, Boteler, Boutin, Bromwell, 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 13, 2004
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 2004

CHAPTER _____

1 AN ACT concerning

2 **State Procurement Law - Revision**

3 FOR the purpose of requiring the Procurement Advisor, in consultation with the
4 General Counsel and the Procurement Advisory Council, to ~~develop a certain~~
5 ~~program for the reporting of certain fraud, waste, and abuse in the procurement~~
6 ~~process; repealing certain requirements to publish certain notice of certain~~
7 ~~awards~~ make certain recommendations regarding the award of financial
8 incentives for certain purposes; repealing a certain limitation on the amount of
9 certain contracts for which the use of certain unsolicited proposals may be
10 authorized; repealing a certain limitation on the amounts and types of contracts
11 for which the use of certain auction bids may be authorized; ~~altering the term of~~
12 ~~office for a member of the State Board of Contract Appeals~~ altering the
13 qualifications for the members of the State Board of Contract Appeals; requiring
14 ~~a~~ at least one member of the Appeals Board to be authorized to practice law in
15 the State; ~~altering the procedure for appointing an Appeals Board member;~~
16 ~~establishing an Appeals Board Nominating Committee; providing for the~~
17 ~~membership of the Committee; requiring the Committee, in the event of a~~
18 ~~vacancy on the Appeals Board, to solicit, interview, and evaluate certain~~
19 ~~candidates, compile a certain list of qualified candidates, and submit the list to~~
20 ~~the Governor; requiring the Governor to nominate a candidate from the list for~~
21 ~~the vacancy or request that the Committee compile and submit another list;~~
22 ~~providing for reimbursement for the expenses of a Committee member;~~
23 ~~providing for the staff of the Committee~~ authorizing certain persons, without
24 being admitted to practice law in the State, to represent certain contractors in
25 certain procedures before the Appeals Board; providing that certain

1 requirements related to the practice of law in the State do not limit the right of
2 certain persons to represent certain contractors in these proceedings; clarifying
3 that a person may be represented by counsel in an appeal before the Appeals
4 Board; establishing certain limits for expedited and accelerated procedures to be
5 used in cases handled by the Appeals Board; requiring the primary procurement
6 units to develop, implement, and administer an alternative dispute resolution
7 pilot program for construction contract claims; declaring that the policy of the
8 State is to encourage the use of alternative methods of dispute resolution to
9 resolve procurement claims and disputes; authorizing the use of nonbinding
10 mediation under the pilot program; authorizing certain parties to mediate
11 during a certain time period if both parties agree; requiring certain parties to
12 mediate at the discretion of the contractor after a certain time period has
13 expired; requiring the Office of the Attorney General to establish and maintain
14 a list of certain mediators; establishing procedures for the selection of a
15 mediator under the pilot program; requiring the costs of mediation to be shared
16 equally between the parties; requiring the Attorney General, in consultation
17 with the primary procurement units, to report to the Governor and the General
18 Assembly on or before a certain date; establishing a task force to review
19 Maryland's procurement law; establishing the membership, responsibilities, and
20 staffing of the Task Force; making stylistic changes; providing for the
21 application of certain provisions of this Act; providing for the termination of
22 certain provisions of this Act; providing for the effective dates of this Act;
23 requiring the Board of Public Works and the Department of Legislative Services
24 to conduct certain studies and submit certain reports on or before a certain date;
25 providing for the termination of certain provisions of this Act; and generally
26 relating to the revision of the procurement law.

27 BY repealing and reenacting, with amendments,
28 Article - Business Occupations and Professions
29 Section 10-102
30 Annotated Code of Maryland
31 (2000 Replacement Volume and 2003 Supplement)

32 BY repealing and reenacting, with amendments,
33 Article - State Finance and Procurement
34 Section 12-102(a), 13-107.1, 13-111(a), and 15-207
35 Annotated Code of Maryland
36 (2001 Replacement Volume and 2003 Supplement)

37 BY repealing and reenacting, without amendments,
38 Article - State Finance and Procurement
39 Section 13-106(a) and (e)
40 Annotated Code of Maryland
41 (2001 Replacement Volume and 2003 Supplement)

42 ~~BY repealing~~

1 ~~Article - State Finance and Procurement~~
 2 ~~Section 13-106(e)~~
 3 ~~Annotated Code of Maryland~~
 4 ~~(2001 Replacement Volume and 2003 Supplement)~~

5 BY adding to
 6 Article - State Finance and Procurement
 7 Section 15-221(f) ~~and 15-224~~
 8 Annotated Code of Maryland
 9 (2001 Replacement Volume and 2003 Supplement)

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

12 **Article - Business Occupations and Professions**

13 10-102.

14 This title does not limit the right of:

15 (1) an individual to appear on the individual's own behalf before a court
 16 or other unit of the State government;

17 (2) a title insurance company to examine and to insure titles to real
 18 property;

19 (3) a collection company to engage in the business of collecting or
 20 adjusting commercial claims; [or]

21 (4) a lawyer who is employed on a regular salaried basis by a corporation
 22 to represent the corporation before a court or other unit of the State government; OR

23 (5) AN INDIVIDUAL TO REPRESENT A CONTRACTOR IN AN EXPEDITED
 24 PROCEDURE BEFORE THE STATE BOARD OF CONTRACT APPEALS UNDER § 15-221(F)
 25 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

26 **Article - State Finance and Procurement**

27 12-102.

28 (a) (1) The Board shall appoint a Procurement Advisor, who serves at the
 29 pleasure of the Board.

30 (2) The Procurement Advisor shall:

31 (i) ensure that the State's procurement system is utilizing the most
 32 advanced procurement methods and management techniques;

- 1 (ii) effect and enhance communication between State units on
2 procurement matters, with an emphasis on disseminating information on current
3 developments and advances in the management of the State procurement system;
- 4 (iii) examine all procurements that are subject to review by the
5 Board and make recommendations to the Board as to the appropriateness of each
6 procurement, with an emphasis on whether the proposed procurement:
- 7 1. has been competitively conducted; and
- 8 2. conforms to provisions of procurement law, procurement
9 regulations, and best management practices;
- 10 (iv) prevent and detect fraud, waste, and abuse and foster
11 competition in the expenditure of State funds in the procurement of supplies, services,
12 or construction;
- 13 (v) conduct investigations into procurement policies, practices, and
14 procedures, as appropriate;
- 15 (vi) investigate complaints made by State employees concerning
16 fraud, waste, and abuse in the procurement process and any alleged violation of the
17 procurement law or regulations;
- 18 (vii) investigate complaints, other than formal bid protests filed
19 under Title 15, Subtitle 2 of this article, made by contractors and other interested
20 parties concerning fraud, waste, and abuse in the procurement process and any
21 alleged violation of the procurement law or regulations;
- 22 (viii) if apparent criminal violations are found in the course of an
23 investigation, report findings to the Board of Public Works, Office of the Attorney
24 General, United States Attorney, and State or local prosecutors, as appropriate;
- 25 (ix) if other apparent violations of law or regulation are found in the
26 course of an investigation, report findings to the Board of Public Works, the
27 appropriate agency head, and any other appropriate body for administrative action;
- 28 (x) produce and submit to the Board of Public Works and the
29 General Assembly, in accordance with § 2-1246 of the State Government Article, an
30 annual report of the activities of the Procurement Advisor, including:
- 31 1. all findings and recommendations for improvements to the
32 procurement system; and
- 33 2. the identification of barriers to effective broad-based
34 competition in State procurement and recommendations for the elimination of these
35 barriers;
- 36 (xi) assist agencies and the public with questions regarding
37 procurement policy;

1 (xii) establish policies for the effective training of State procurement
 2 officials to ensure that the State's procurement system is utilizing the most advanced
 3 procurement methods and management techniques;

4 (xiii) coordinate activities with other entities performing similar
 5 functions;

6 (xiv) review internal audit reports and comment as appropriate;

7 (xv) be the principal staff to the Procurement Advisory Council; and

8 (xvi) notify the Legislative Auditor when the Procurement Advisor
 9 undertakes an investigation under item (vi) or (vii) of this paragraph.

10 (3) The Procurement Advisor shall:

11 (i) have access to all books, accounts, records, reports, any material
 12 related to contracts and procurement, and all other papers and equipment necessary
 13 to carry out its responsibilities; and

14 (ii) have direct and prompt access to all heads of agencies involved
 15 in the expenditure of public funds.

16 (4) TO CARRY OUT THE RESPONSIBILITIES OF DETECTING, PREVENTING,
 17 AND INVESTIGATING FRAUD, WASTE, AND ABUSE IN THE PROCUREMENT PROCESS,
 18 AS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE PROCUREMENT
 19 ADVISOR, IN CONSULTATION WITH THE GENERAL COUNSEL AND THE
 20 PROCUREMENT ADVISORY COUNCIL, SHALL ~~DEVELOP A PROGRAM FOR:~~

21 ~~(I) THE REPORTING BY ANY INDIVIDUAL, INCLUDING A STATE~~
 22 ~~EMPLOYEE OR OFFICIAL, OF FRAUD, WASTE, AND ABUSE IN THE PROCUREMENT~~
 23 ~~PROCESS;~~

24 ~~(II) THE PROTECTION OF STATE EMPLOYEES OR STATE OFFICIALS~~
 25 ~~FROM FALSE ACCUSATIONS; AND~~

26 ~~(III) MAKE RECOMMENDATIONS TO THE BOARD OF PUBLIC WORKS~~
 27 ~~FOR THE AWARD OF FINANCIAL INCENTIVES TO INDIVIDUALS WHOSE REPORTS OF~~
 28 ~~FRAUD, WASTE, OR ABUSE IN THE PROCUREMENT PROCESS RESULT IN THE~~
 29 ~~RECOVERY OF DAMAGES UNDER THIS DIVISION II.~~

30 13-106.

31 (a) A procurement officer may award a procurement contract on the basis of
 32 noncompetitive negotiation if:

33 (1) the procurement is for human, social, or educational services to be
 34 provided directly to individuals with disabilities, individuals who are aged, indigent,
 35 disadvantaged, unemployed, mentally or physically ill, or displaced or minors;

1 (2) the procurement is one of a class for which the Department of Budget
2 and Management has approved the use of noncompetitive negotiation; and

3 (3) with the approval of the head of the unit, the procurement officer
4 determines that:

5 (i) at least 2 sources are available for the services; but

6 (ii) the absence of effective competition makes it unreasonable to
7 expect bids or proposals from the available sources.

8 {(e) A unit shall publish in the Contract Weekly notice of a procurement
9 contract awarded under this section.}

10 13-107.1.

11 (a) (1) In this section the following words have the meanings indicated.

12 (2) "Business and economic development services" means services
13 procured by the Department of Business and Economic Development.

14 (3) "Educational services" means services procured to provide or assist in
15 providing training to third-party clients under a contract.

16 (4) "Health or social services" means services procured to provide or
17 assist in providing support, care, or shelter to third-party clients under a contract.

18 (b) A procurement officer may enter into a contract based on an unsolicited
19 proposal if the unsolicited proposal:

20 (1) is in writing;

21 (2) (i) contains a novel or innovative concept, application, approach, or
22 method which, to the knowledge of the procurement officer, is not used by or available
23 to another unit; or

24 (ii) demonstrates a novel capability of the offeror of the proposal;

25 (3) has not been previously submitted to the unit by another person;

26 (4) is for the delivery of:

27 (i) educational services;

28 (ii) health or social services; or

29 (iii) business and economic development services; and

30 (5) meets a need of or is otherwise advantageous to the unit.

1 (c) (1) There is an interagency panel consisting of representatives appointed
2 by the Governor from the following:

3 (i) the Department of Health and Mental Hygiene;

4 (ii) the Department of Human Resources;

5 (iii) the Department of Labor, Licensing, and Regulation;

6 (iv) the Department of Juvenile Services;

7 (v) the Office for Individuals with Disabilities;

8 (vi) the Department of Aging;

9 (vii) the Department of Business and Economic Development; and

10 (viii) the Council on Management and Productivity.

11 (2) (i) A procurement officer shall forward an unsolicited proposal
12 submitted under this section to the interagency panel described under paragraph (1)
13 of this subsection for review and a determination as to whether the unsolicited
14 proposal meets the requirements of subsection (a) of this section.

15 (ii) The interagency panel shall make a determination as to
16 whether the unsolicited proposal meets the requirements of subsection (a) of this
17 section by a majority vote of the panel:

18 1. at a meeting of panel members or their designees;

19 2. by a telephone poll of panel members; or

20 3. in writing.

21 (iii) If the interagency panel determines that the unsolicited
22 proposal does not meet the requirements of subsection (a) of this section, the
23 procurement officer may not award a procurement contract based on the unsolicited
24 proposal.

25 (iv) 1. The interagency panel shall make a determination under
26 subparagraph (i) of this paragraph within 30 days after receiving the unsolicited
27 proposal for review.

28 2. If the interagency panel fails to make a determination
29 under subparagraph (i) of this paragraph within the 30-day period established under
30 this subparagraph, the unsolicited proposal shall be deemed to have been disapproved
31 by the interagency panel.

32 (d) If an unsolicited proposal meets the requirements of subsection (b) of this
33 section, the offeror of the proposal is not required to be the only available source for
34 the contract awarded under this section.

1 (e) Before awarding a procurement contract under this section, a procurement
2 officer shall obtain:

3 (1) the approval of the head of the unit; and

4 (2) any other approval required by law.

5 (f) The term, including extensions, of a contract awarded under this section
6 may not exceed 2 years.

7 (g) [State expenditures under a contract awarded under this section may not
8 exceed \$1,000,000 annually.

9 (h)] (1) Except as provided under paragraph (2) of this subsection, a
10 procurement officer shall treat the information contained in an unsolicited proposal
11 as confidential information that is not subject to disclosure under any other State or
12 local law.

13 (2) If a contract is awarded under this section, disclosure of the
14 unsolicited proposal is governed by Title 10, Subtitle 6, Part III of the State
15 Government Article.

16 [(i)] (H) (1) Not less than 30 days before the execution and award of a
17 contract based on an unsolicited proposal under this section, the contracting unit
18 shall publish a general notice of the intent to award the contract in:

19 (i) the Contract Weekly; and

20 (ii) at least one newspaper of general circulation in:

21 1. the county of the agency to be served under the contract;
22 and

23 2. if applicable, the county of the client population to be
24 served by the agency under the contract.

25 (2) For purposes of this subsection:

26 (i) the Baltimore Sun and the Washington Post shall be considered
27 newspapers of general circulation in the counties of the State; and

28 (ii) in Baltimore City, Baltimore County, and Anne Arundel County,
29 the Baltimore Afro-American shall be considered a newspaper of general circulation.

30 (3) If, during the 30-day period established under paragraph (1) of this
31 subsection, a person petitions the interagency panel for reconsideration of a
32 determination of approval under subsection (b) of this section, the interagency panel
33 shall reconsider the determination of approval and make written findings affirming
34 or reversing the determination of approval.

1 [(j) In addition to publishing notice of the intent to award a contract based on
 2 an unsolicited proposal under subsection (i) of this section, not more than 30 days
 3 after the execution and approval of a procurement contract awarded under this
 4 section, a unit shall publish notice of the award in the Contract Weekly.

5 (k)] (I) The following agencies shall implement an educational outreach
 6 campaign on the availability of the unsolicited proposal method of procurement:

- 7 (1) the Department of Health and Mental Hygiene;
- 8 (2) the Department of Human Resources;
- 9 (3) the Department of Labor, Licensing, and Regulation;
- 10 (4) the Department of Juvenile Services;
- 11 (5) the Office for Individuals with Disabilities;
- 12 (6) the Department of Aging; and
- 13 (7) the Department of Business and Economic Development.

14 13-111.

15 (a) (1) [This] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
 16 SUBSECTION, THIS section applies to the procurement of SERVICES, EQUIPMENT, AND
 17 supplies[, with an estimated contract value of \$1,000,000 or more,] by a primary
 18 procurement unit.

19 (2) THIS SECTION DOES NOT APPLY TO CONSTRUCTION CONTRACTS OR
 20 THE PROCUREMENT OF INFORMATION TECHNOLOGY SERVICES.

21 15-207.

22 (a) The Appeals Board consists of [3] THREE members appointed by the
 23 Governor:

24 ~~(1) FROM A LIST OF ELIGIBLE CANDIDATES SUBMITTED BY THE~~
 25 ~~APPEALS BOARD NOMINATING COMMITTEE UNDER SUBSECTION (F) OF THIS~~
 26 ~~SECTION; AND~~

27 ~~(2)~~ with the advice and consent of the Senate.

28 (b) (1) ~~Each~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
 29 EACH member of the Appeals Board shall:

30 ~~(1)~~ (I) be qualified to serve in a quasi-judicial capacity; [and]

31 ~~(2)~~ (II) 1. BE AUTHORIZED BY THE COURT OF APPEALS TO PRACTICE
 32 LAW IN THE STATE AND HAVE PROCUREMENT EXPERIENCE; AND OR

1 (3) 2. have a thorough knowledge of procurement practices and
2 processes.

3 (2) AT LEAST ONE MEMBER OF THE APPEALS BOARD SHALL BE
4 AUTHORIZED BY THE COURT OF APPEALS TO PRACTICE LAW IN THE STATE.

5 (c) Before taking office, each appointee to the Appeals Board shall take the
6 oath required by Article I, § 9 of the Maryland Constitution.

7 (d) (1) The term of a member is ~~{5}~~ 40 years.

8 (2) The terms of members are staggered as required by the terms
9 provided for members of the Appeals Board on October 1, [1988] 2004.

10 (3) At the end of a term, a member continues to serve until a successor is
11 appointed and qualifies.

12 (4) A member who is appointed after a term has begun serves only for
13 the rest of the term and until a successor is appointed and qualifies.

14 (e) The Governor may remove a member of the Appeals Board for cause.

15 (F) ~~(1) THERE IS AN APPEALS BOARD NOMINATING COMMITTEE.~~

16 ~~(2) THE COMMITTEE CONSISTS OF FIVE MEMBERS AS FOLLOWS:~~

17 ~~(I) A RESIDENT OF THE STATE FROM THE CONTRACTOR~~
18 ~~COMMUNITY, APPOINTED BY THE GOVERNOR;~~

19 ~~(II) A MEMBER OF THE MARYLAND STATE BAR ASSOCIATION WITH~~
20 ~~EXPERTISE IN PUBLIC CONTRACTS LAW, APPOINTED BY THE GOVERNOR;~~

21 ~~(III) A MEMBER APPOINTED BY THE PRESIDENT OF THE SENATE OF~~
22 ~~MARYLAND;~~

23 ~~(IV) A MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE OF~~
24 ~~DELEGATES; AND~~

25 ~~(V) A MEMBER APPOINTED BY THE ATTORNEY GENERAL.~~

26 (3) ~~IN THE EVENT OF A VACANCY ON THE APPEALS BOARD, THE~~
27 ~~COMMITTEE SHALL:~~

28 ~~(I) SOLICIT QUALIFIED CANDIDATES FOR THE VACANCY;~~

29 ~~(II) INTERVIEW AND EVALUATE CANDIDATES WHOM THE~~
30 ~~COMMITTEE DETERMINES TO BE MOST QUALIFIED;~~

31 ~~(III) COMPILE A LIST OF THE THREE MOST QUALIFIED CANDIDATES;~~
32 ~~AND~~

1 ~~(IV) SUBMIT THE LIST OF CANDIDATES TO THE GOVERNOR.~~

2 ~~(4) ON RECEIPT OF A LIST OF CANDIDATES FROM THE COMMITTEE, THE~~
3 ~~GOVERNOR SHALL:~~

4 ~~(I) NOMINATE ONE OF THE CANDIDATES ON THE LIST TO FILL THE~~
5 ~~VACANCY ON THE APPEALS BOARD; OR~~

6 ~~(II) REQUEST THAT THE COMMITTEE COMPILE AND SUBMIT~~
7 ~~ANOTHER LIST OF THREE CANDIDATES FOR THE VACANCY.~~

8 ~~(5) ON REQUEST BY THE GOVERNOR, THE COMMITTEE SHALL COMPILE~~
9 ~~AND SUBMIT ANOTHER LIST OF THREE CANDIDATES TO THE GOVERNOR.~~

10 ~~(6) A MEMBER OF THE COMMITTEE:~~

11 ~~(I) MAY NOT RECEIVE COMPENSATION; BUT~~

12 ~~(II) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE~~
13 ~~STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.~~

14 ~~(7) THE APPEALS BOARD SHALL PROVIDE STAFF SUPPORT FOR THE~~
15 ~~COMMITTEE.~~

16 15-221.

17 (F) (1) IN AN APPEAL WHERE THE AMOUNT IN DISPUTE IS:

18 ~~(I) \$50,000 OR LESS, THE APPELLANT MAY ELECT TO HAVE THE~~
19 ~~APPEAL PROCESSED UNDER A "SMALL CLAIMS (EXPEDITED)" PROCEDURE~~
20 ~~REQUIRING DECISION OF THE APPEAL, WHEN POSSIBLE, WITHIN 120 DAYS AFTER~~
21 ~~THE APPEALS BOARD RECEIVES WRITTEN NOTICE OF THE APPELLANT'S ELECTION~~
22 ~~TO USE THIS PROCEDURE.; AND~~

23 ~~(2) (II) IN AN APPEAL WHERE THE AMOUNT IN DISPUTE IS \$100,000 OR~~
24 ~~LESS, THE APPELLANT MAY ELECT TO HAVE THE APPEAL PROCESSED UNDER AN~~
25 ~~"ACCELERATED" PROCEDURE REQUIRING DECISION OF THE APPEAL, WHEN~~
26 ~~POSSIBLE, WITHIN 180 DAYS AFTER THE APPEALS BOARD RECEIVES WRITTEN~~
27 ~~NOTICE OF THE APPELLANT'S ELECTION TO USE THIS PROCEDURE.~~

28 ~~(2) A PERSON MAY BE REPRESENTED BY COUNSEL IN AN APPEAL~~
29 ~~BEFORE THE APPEALS BOARD.~~

30 ~~(3) A SOLE PROPRIETOR, CORPORATE OFFICER OR DIRECTOR, GENERAL~~
31 ~~PARTNER, LIMITED LIABILITY COMPANY MEMBER, PERSON WITH AT LEAST 10%~~
32 ~~OWNERSHIP, OR OTHER PRINCIPAL OF A CONTRACTOR, WHO HAS NOT BEEN~~
33 ~~ADMITTED TO PRACTICE LAW IN THE STATE, MAY REPRESENT THAT CONTRACTOR IN~~
34 ~~AN EXPEDITED PROCEDURE BEFORE THE APPEALS BOARD.~~

35 ~~(3) (4) THE APPEALS BOARD SHALL ADOPT REGULATIONS TO~~
36 ~~IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article -- State Finance and Procurement**

4 ~~13-111.~~

5 (a) (1) ~~[This] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
6 ~~SUBSECTION, THIS section applies to the procurement of SERVICES, EQUIPMENT, AND~~
7 ~~supplies[, with an estimated contract value of \$1,000,000 or more,] by a primary~~
8 ~~procurement unit.~~

9 (2) ~~THIS SECTION DOES NOT APPLY TO CONSTRUCTION CONTRACTS OR~~
10 ~~THE PROCUREMENT OF INFORMATION TECHNOLOGY SERVICES.~~

11 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
12 read as follows:

13 **Article -- State Finance and Procurement**

14 ~~15-224.~~

15 (A) ~~IT IS THE DECLARED POLICY OF THE STATE TO ENCOURAGE TO THE~~
16 ~~MAXIMUM EXTENT PRACTICABLE THE USE OF ALTERNATIVE METHODS OF DISPUTE~~
17 ~~RESOLUTION TO RESOLVE PROCUREMENT CLAIMS AND DISPUTES.~~

18 (B) ~~THE PRIMARY PROCUREMENT UNITS SHALL DEVELOP, IMPLEMENT, AND~~
19 ~~ADMINISTER AN ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM, FOR THE~~
20 ~~RESOLUTION OF CLAIMS UNDER PROCUREMENT CONTRACTS FOR CONSTRUCTION,~~
21 ~~UNDER GUIDELINES ESTABLISHED UNDER SUBSECTION (D) OF THIS SECTION.~~

22 (C) ~~THE PILOT PROGRAM SHALL APPLY ONLY TO CONSTRUCTION CONTRACT~~
23 ~~CLAIMS.~~

24 (D) (1) ~~TO RESOLVE CONSTRUCTION CONTRACT CLAIMS, THE PILOT~~
25 ~~PROGRAM SHALL AUTHORIZE THE USE OF NONBINDING MEDIATION, UNLESS THE~~
26 ~~PARTIES OTHERWISE AGREE.~~

27 (2) ~~THE PARTIES TO A CONTRACT:~~

28 (I) ~~BEFORE THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED~~
29 ~~OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A~~
30 ~~RESOLUTION UNDER § 15-219(D) OF THIS SUBTITLE, MAY MEDIATE IF BOTH PARTIES~~
31 ~~AGREE; OR~~

32 (II) ~~AFTER THE EARLIER OF 180 DAYS AFTER THE CLAIM IS FILED~~
33 ~~OR THE DATE THAT THE REVIEWING AUTHORITY GIVES WRITTEN NOTICE OF A~~
34 ~~RESOLUTION, SHALL MEDIATE AT THE DISCRETION OF THE CONTRACTOR.~~

1 (3) ~~THE OFFICE OF THE ATTORNEY GENERAL SHALL ESTABLISH AND~~
2 ~~MAINTAIN A LIST OF MEDIATORS QUALIFIED TO MEDIATE A CONSTRUCTION~~
3 ~~CONTRACT CLAIM.~~

4 (4) ~~IF MEDIATION IS USED TO RESOLVE A CLAIM UNDER THIS SECTION,~~
5 ~~THE MEDIATOR SHALL BE:~~

6 (I) ~~AGREED TO BY THE INTERESTED PARTIES; OR~~

7 (II) ~~CHOSEN BY THE CONTRACTOR FROM A LIST OF THREE~~
8 ~~MEDIATORS PROVIDED BY THE ATTORNEY GENERAL FROM THE ROSTER OF~~
9 ~~QUALIFIED MEDIATORS ESTABLISHED UNDER PARAGRAPH (3) OF THIS SUBSECTION.~~

10 (5) ~~THE COSTS OF A MEDIATION SHALL BE SHARED EQUALLY BETWEEN~~
11 ~~THE INTERESTED PARTIES.~~

12 ~~SECTION 4. AND BE IT FURTHER ENACTED, That:~~

13 (a) ~~There is a Joint Task Force on Maryland's Procurement Law.~~

14 (b) ~~The Task Force consists of the following members:~~

15 (1) ~~5 members of the Senate of Maryland, appointed by the President of~~
16 ~~the Senate; and~~

17 (2) ~~5 members of the House of Delegates, appointed by the Speaker of the~~
18 ~~House.~~

19 (c) ~~The President and Speaker shall designate the co-chairmen of the Task~~
20 ~~Force.~~

21 (d) ~~The Office of the Attorney General, the Board of Public Works, and the~~
22 ~~Department of Legislative Services shall provide staff for the Task Force.~~

23 (e) ~~A member of the Task Force:~~

24 (1) ~~may not receive compensation; but~~

25 (2) ~~is entitled to reimbursement for expenses under the Standard State~~
26 ~~Travel Regulations, as provided in the State budget.~~

27 (f) ~~The Task Force shall:~~

28 (1) ~~review the organizational structure and substantive provisions of~~
29 ~~Maryland's procurement law, as they have evolved since the law was last~~
30 ~~comprehensively revised;~~

31 (2) ~~review the Model Procurement Code adopted by the American Bar~~
32 ~~Association in 2000 and identify provisions which would improve Maryland's~~
33 ~~procurement law and procurement process;~~

1 (3) identify areas in which Maryland's procurement law could be
2 updated, clarified, and reorganized; and

3 (4) develop any recommendations and proposed legislation it considers
4 appropriate for revising the procurement law.

5 (g) The Task Force shall report its findings and recommendations to the
6 Senate Education, Health, and Environmental Affairs Committee and the House
7 Health and Government Operations Committee, in accordance with § 2-1246 of the
8 State Government Article, on or before December 1, 2005.

9 SECTION 5. ~~AND BE IT FURTHER ENACTED, That the provisions of Section~~
10 ~~1 of this Act concerning the qualifications and the term of office for a member of the~~
11 ~~Board of Contract Appeals may not be construed to apply to members of the Board in~~
12 ~~office on October 1, 2004, but the provisions of this Act concerning the qualifications~~
13 ~~and the term of office for a member of the Board shall take effect at the beginning of~~
14 ~~the next following term of office for each member.~~

15 SECTION 6. ~~2.~~ AND BE IT FURTHER ENACTED, That the Department of
16 Legislative Services is requested to review and evaluate the impact on State
17 expenditures and administrative efficiency of the changes made by Section 2 of this
18 Act to the auction bid process as provided in § 13-111(a) of the State Finance and
19 Procurement Article as enacted by this Act. The Department shall submit a report to
20 the Senate Education, Health, and Environmental Affairs Committee and the House
21 Health and Government Operations Committee, in accordance with § 2-1246 of the
22 State Government Article, on or before January 1, 2007.

23 SECTION 7. ~~AND BE IT FURTHER ENACTED, That the Office of the Attorney~~
24 ~~General, in consultation with the primary procurement units, shall report on or~~
25 ~~before January 1, 2006, to the Governor and, in accordance with § 2-1246 of the State~~
26 ~~Government Article, the General Assembly, on the effectiveness and fiscal impact of,~~
27 ~~and recommendations about, the alternative dispute resolution pilot program~~
28 ~~established under Section 3 of this Act. The report shall include a statistical analysis~~
29 ~~of the size of each case and the types of cases mediated, the outcome of any~~
30 ~~alternative dispute resolution proceedings, and an estimate of any cost savings or~~
31 ~~additional costs resulting from the alternative dispute resolution process.~~

32 SECTION 8. ~~AND BE IT FURTHER ENACTED, That Section 2 of this Act shall~~
33 ~~remain effective for a period of 3 years and, at the end of September 30, 2007, with no~~
34 ~~further action required by the General Assembly, Section 2 of this Act shall be~~
35 ~~abrogated and of no further force and effect.~~

36 SECTION 9. ~~AND BE IT FURTHER ENACTED, That Section 3 of this Act shall~~
37 ~~remain effective for a period of 2 years and, at the end of September 30, 2006, with no~~
38 ~~further action required by the General Assembly, Section 3 of this Act shall be~~
39 ~~abrogated and of no further force and effect.~~

40 SECTION 10. ~~AND BE IT FURTHER ENACTED, That Sections 1, 2, 3, and 5~~
41 ~~through 9 of this Act shall take effect October 1, 2004.~~

1 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly
2 finds that the current level of decentralization of the procurement process in
3 Maryland, and the growing number of units of State government seeking and
4 obtaining exemptions from the procurement law, may thwart the purposes and
5 protections originally envisioned in the enactment of the State procurement law.
6 Accordingly, the General Assembly requests that:

7 (a) The Board of Public Works:

8 (1) examine the level and extent of the delegation of its procurement
9 responsibilities to units of State government and whether there are appropriate
10 safeguards and accountability measures in place to promote the purposes set forth in
11 § 11-201 of the State Finance and Procurement Article, including providing increased
12 economy in the State procurement system, providing safeguards for maintaining a
13 State procurement system of quality and integrity, and promoting the development of
14 uniform procurement procedures to the extent possible; and

15 (2) on or before December 1, 2004, submit a report, including any
16 recommendations for revisions to the State procurement law or regulations, to the
17 Governor and the General Assembly, in accordance with § 2-1246 of the State
18 Government Article; and

19 (b) The Department of Legislative Services, with the assistance and
20 cooperation of the Board of Public Works and State units:

21 (1) conduct a study that reviews for each State entity that is exempt
22 from any portion of the State procurement law:

23 (i) the extent of the exemption;

24 (ii) the original justification for the exemption and whether the
25 circumstances continue to exist that justified the original exemption;

26 (iii) any procurement policies or procedures developed by the entity
27 and the extent to which the policies and procedures comply with the purposes of State
28 procurement law;

29 (iv) the existence of any accountability measures for determining
30 the efficiency, effectiveness, and economy with which the entity is using State
31 resources; and

32 (v) the date of, and findings from, the most recent legislative audit
33 of the entity; and

34 (2) on or before December 1, 2004, submit a report to the Governor and
35 General Assembly, in accordance with § 2-1246 of the State Government Article.

36 SECTION 4. 4. AND BE IT FURTHER ENACTED, That, ~~except as provided in~~
37 ~~Section 10 of this Act,~~ this Act shall take effect July 1, 2004. Section 4 3 of this Act
38 shall remain effective for a period of 1 year and 6 months and, at the end of December

1 31, ~~2005~~ 2004, with no further action required by the General Assembly, Section 4 3 of
2 this Act shall be abrogated and of no further force and effect.