

# HOUSE BILL 1528

P2

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By: **Delegate Lafferty**

Introduced and read first time: February 21, 2008

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement - Dispute Resolution - Use of Mediation and**  
3 **Arbitration**

4 FOR the purpose of authorizing a procurement officer who receives a protest or a  
5 contract claim from a contractor to participate in mediation and, subject to  
6 conditions, to agree to arbitration; authorizing a person who reviews a contract  
7 claim to refer the matter to mediation and, subject to conditions, to agree to  
8 arbitration; authorizing a procurement officer who receives a contract claim  
9 from a unit to participate in mediation and, subject to conditions, to agree to  
10 arbitration; and generally relating to the use of mediation and arbitration in  
11 dispute resolution under the State procurement law.

12 BY repealing and reenacting, with amendments,  
13 Article - State Finance and Procurement  
14 Section 15-218, 15-219, and 15-219.1  
15 Annotated Code of Maryland  
16 (2006 Replacement Volume and 2007 Supplement)

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

19 **Article - State Finance and Procurement**

20 15-218.

21 (a) Except as provided under § 15-219 of this subtitle, a procurement officer  
22 who receives a protest or a contract claim from a contractor shall comply with this  
23 section.

24 (b) (1) On receipt of a protest or contract claim from a contractor, a  
25 procurement officer:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) shall review the substance of the protest or contract claim;

2 (ii) may request additional information or substantiation  
3 through an appropriate procedure;

4 (iii) may discuss with interested parties and, if appropriate, may  
5 conduct negotiations with the person initiating the protest or contract claim; [and]

6 **(IV) MAY PARTICIPATE IN MEDIATION AND, ON REQUEST**  
7 **AND WITH THE CONSENT OF THE REVIEWING AUTHORITY, AGREE TO**  
8 **ARBITRATION; AND**

9 [(iv)] (v) shall comply with any applicable regulations.

10 (2) Unless clearly inappropriate, the procurement officer shall seek  
11 the advice of the Office of the Attorney General.

12 (c) (1) Subject to subsection (b) of this section and consistent with the  
13 State budget and other applicable laws, the procurement officer shall:

14 (i) resolve the protest or contract claim by agreement of the  
15 parties;

16 (ii) wholly or partly deny the protest or contract claim; or

17 (iii) wholly or partly grant the relief sought by the person who  
18 submitted the protest or contract claim.

19 (2) The procurement officer promptly shall send the decision in  
20 writing to the reviewing authority.

21 (d) Unless otherwise provided by regulation, the decision of the procurement  
22 officer shall be reviewed promptly by:

23 (1) the head of the unit; and

24 (2) the head of the principal department or other equivalent unit of  
25 which the unit is a part.

26 (e) (1) Except as provided under paragraph (3) of this subsection, the  
27 reviewing authority shall approve, disapprove, or modify the decision of the  
28 procurement officer.

29 (2) The action of the reviewing authority under this subsection shall  
30 be the final action of the unit.

1 (3) The reviewing authority may remand the proceeding with  
2 instructions to the procurement officer.

3 (4) On remand, the procurement officer shall proceed under subsection  
4 (b) of this section in accordance with those instructions.

5 15–219.

6 (a) Except to the extent a shorter period is prescribed by regulation  
7 governing differing site conditions, a contractor shall file a written notice of a claim  
8 relating to a procurement contract for construction within 30 days after the basis for  
9 the claim is known or should have been known.

10 (b) Unless extended by the unit, within 90 days after submitting a notice of a  
11 contract claim under a procurement contract for construction, a contractor shall  
12 submit to the unit a written explanation that states:

13 (1) the amount of the contract claim;

14 (2) the facts on which the contract claim is based; and

15 (3) all relevant data and correspondence that may substantiate the  
16 contract claim.

17 (c) (1) Subject to paragraph (2) of this subsection, the head of the unit  
18 engaged in procurement of the construction shall review the contract claim.

19 (2) If the unit is part of a principal department or other equivalent  
20 unit, the Secretary of the principal department or the equivalent official shall review  
21 the contract claim, unless review has been delegated by regulation to the head of the  
22 unit.

23 (d) The person who reviews a contract claim under subsection (c) of this  
24 section [shall]:

25 (1) **SHALL** investigate the contract claim; [and]

26 (2) **MAY REFER THE MATTER TO MEDIATION AND, ON REQUEST**  
27 **AND WITH THE CONSENT OF THE REVIEWING AUTHORITY, AGREE TO**  
28 **ARBITRATION; AND**

29 [(2)] (3) **SHALL** give the contractor written notice of a resolution of  
30 the contract claim:

31 (i) within 90 days after receiving the contract claim or a longer  
32 period to which the parties agree, if the amount of the contract claim is not more than

1 the amount under which the accelerated procedure may be selected before the Appeals  
2 Board; or

3 (ii) for any other contract claim, within 180 days after receiving  
4 the contract claim or a longer period to which the parties agree.

5 (e) Recovery under a contract claim is not allowed for any expense incurred:

6 (1) more than 30 days before the required submission of a notice of a  
7 claim under subsection (a) of this section; or

8 (2) unless the time for submission of a claim is extended under  
9 subsection (b) of this section, more than 120 days before the required submission of the  
10 claim.

11 (f) (1) If the unit determines that it is responsible for a portion but not all  
12 of the amount claimed by the contractor, subject to the terms of the contract, the unit  
13 shall pay the undisputed amount.

14 (2) Payment of the undisputed amount:

15 (i) is not an admission of the liability of the unit on the claims;  
16 and

17 (ii) does not preclude recovery of the amount paid if it  
18 subsequently is determined that the determination of the unit was not correct.

19 (g) (1) A decision not to pay a contract claim is a final action for the  
20 purpose of appeal to the Appeals Board.

21 (2) The failure to reach a decision within the time required under  
22 subsection (c) of this section may be deemed, at the option of the contractor, to be a  
23 decision not to pay the contract claim.

24 (h) At the time of final payment, the unit shall:

25 (1) release the retainage due to the contractor; and

26 (2) pay any interest that:

27 (i) has accrued on the retainage from the time of payment of  
28 the semifinal estimate; and

29 (ii) is due and payable to the contractor.

30 15-219.1.

1           (a)   (1)   A unit may assert a contract claim against a contractor by sending  
2 written notice to the contractor and the procurement officer that states:

3                   (i)   the basis for the contract claim;

4                   (ii)   to the extent known, the amount, or the performance or  
5 other action, requested by the unit in the contract claim; and

6                   (iii)   the date by which the contractor is required to provide a  
7 written response to the contract claim.

8           (2)   On receipt of a contract claim from a unit, a procurement officer:

9                   (i)   shall review the substance of the contract claim;

10                   (ii)   may request additional information or substantiation  
11 through an appropriate procedure; [and]

12                   (iii)   may discuss or, if appropriate, negotiate the contract claim  
13 with the unit or contractor; **AND**

14                   **(IV) MAY PARTICIPATE IN MEDIATION AND, ON REQUEST**  
15 **AND WITH THE CONSENT OF THE REVIEWING AUTHORITY, AGREE TO**  
16 **ARBITRATION.**

17           (3)   The procurement officer shall proceed under subsection (b) of this  
18 section if the contractor fails to respond, provides an inadequate response, or denies  
19 the contract claim or the relief sought by the unit in whole or in part.

20           (b)   (1)   If the contractor and the unit do not resolve the contract claim, the  
21 procurement officer shall prepare a proposed decision on the contract claim, including:

22                   (i)   a description of the contract claim;

23                   (ii)   references to pertinent contract provisions;

24                   (iii)   a statement of factual areas of agreement or disagreement;  
25 and

26                   (iv)   a statement in the proposed decision wholly or partly  
27 granting or denying the relief sought, with supporting rationale.

28           (2)   Unless otherwise provided by regulation, the procurement officer  
29 shall submit the contract claim and proposed decision to:

30                   (i)   the head of the unit; and

1                   (ii) the head of the principal department or other equivalent  
2 unit of which the unit is a part.

3                   (3) (i) The reviewing authority shall approve, modify, or  
4 disapprove the proposed decision.

5                   (ii) In disapproving a proposed decision, the reviewing authority  
6 may remand the contract claim with instructions to the procurement officer.

7                   (iii) On remand, the procurement officer shall proceed as  
8 required under this subsection and in accordance with the instructions of the  
9 reviewing authority.

10                  (4) The decision of the reviewing authority is the final action of the  
11 unit.

12                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2008.