

# HOUSE BILL 304

P2

5lr1614

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By: **Delegate Kerr**

Introduced and read first time: January 9, 2025

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Transparency and Procedures**

3 FOR the purpose of requiring a unit of State government to provide a certain debriefing of  
4 a contract award to certain persons on request; adding an exemption to the  
5 prohibition on an individual who assists in the drafting of specifications, an  
6 invitation for bids, or a request for proposals from submitting a bid or proposal or  
7 assisting in the submission of a bid or proposal; requiring a procurement contract to  
8 include a certain clause pertaining to change orders related to changes in law;  
9 altering the required contents of a certain change order; altering the time within  
10 which a procurement officer shall make a decision after receiving a certain protest;  
11 specifying that certain decisions or failure to reach a decision may be considered a  
12 denial of a certain protest; altering the time within which a written notice of a claim  
13 relating to a certain procurement contract shall be made; applying certain provisions  
14 related to a contract claim that applied to construction contracts to certain other  
15 procurement contracts; requiring a contractor, on request of a procurement officer,  
16 to provide certain information prior to receiving payment on a claim; authorizing the  
17 Maryland State Board of Contract Appeals to award a contractor certain costs of  
18 defending certain claims; specifying that an appeal from a final decision of the  
19 Appeals Board may be appealed to the Appellate Court of Maryland; and generally  
20 relating to State procurement procedures.

21 BY repealing and reenacting, with amendments,  
22 Article – State Finance and Procurement  
23 Section 11–101, 13–201, 13–212.1(b), 13–218(a), 15–112(b)(1), 15–218, 15–219(a)  
24 through (c) and (h), 15–221.2, and 15–223(a)  
25 Annotated Code of Maryland  
26 (2021 Replacement Volume and 2024 Supplement)

27 BY adding to  
28 Article – State Finance and Procurement  
29 Section 13–104(h) and 15–219(h)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2021 Replacement Volume and 2024 Supplement)

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

5 **Article – State Finance and Procurement**

6 11–101.

7 (a) In this Division II the following words have the meanings indicated unless:

8 (1) the context clearly requires a different meaning; or

9 (2) a different definition is provided for a particular title or provision.

10 (b) (1) “Architectural services” means professional or creative work that:

11 (i) is performed in connection with the design and supervision of  
12 construction or landscaping; and

13 (ii) requires architectural education, training, and experience.

14 (2) “Architectural services” includes consultation, research, investigation,  
15 evaluation, planning, architectural design and preparation of related documents, and  
16 coordination of services that structural, civil, mechanical, and electrical engineers and  
17 other consultants provide.

18 (3) “Architectural services” does not include construction inspection  
19 services, services provided in connection with an energy performance contract, or  
20 structural, mechanical, plumbing, or electrical engineering.

21 (c) “Bid” means a response to an invitation for bids under § 13–103 of this article.

22 (d) “Board” means the Board of Public Works.

23 (e) **“CHANGE ORDER” MEANS A WRITTEN ORDER THAT:**

24 **(1) IS SIGNED BY THE PROCUREMENT OFFICER; AND**

25 **(2) DIRECTS THE CONTRACTOR TO MAKE CHANGES THAT ARE**  
26 **REQUIRED BY A CHANGE IN LAW OR THAT THE PROCUREMENT CONTRACT**  
27 **AUTHORIZES THE PROCUREMENT OFFICER TO ORDER WITHOUT THE CONSENT OF**  
28 **THE CONTRACTOR.**

1           **(F)** “Chief Procurement Officer” means an official of the Department of General  
2 Services who:

3                   (1) shall be appointed by the Governor with the advice and consent of the  
4 Senate;

5                   (2) except for procurement activity by a primary procurement unit other  
6 than the Department of General Services, is the head of all procurement activity for the  
7 Executive Branch of State government; and

8                   (3) may engage in or control procurement for the Department of General  
9 Services in accordance with § 12–107(b)(2) of this article.

10           **[(f)] (G)** (1) “Construction” means the process of building, altering,  
11 improving, or demolishing an improvement to real property.

12                   (2) “Construction” includes any major work necessary to repair, prevent  
13 damage to, or sustain existing components of an improvement to real property.

14                   (3) “Construction” does not include the maintenance or routine operation  
15 of an existing improvement to real property, or activities related to an energy performance  
16 contract.

17           **[(g)] (H)** (1) “Construction related services” means feasibility studies,  
18 surveys, construction management, construction inspection, and similar efforts associated  
19 with construction or the acquisition of public improvements as defined in § 4–401(d) of this  
20 article.

21                   (2) “Construction related services” does not include services provided in  
22 connection with an energy performance contract.

23           **(I) “CONTRACT MODIFICATION” MEANS A WRITTEN ALTERATION THAT:**

24                   **(1) AFFECTS SPECIFICATIONS, DELIVERY POINT, DATE OF DELIVERY,**  
25 **PERIOD OF PERFORMANCE, PRICE, QUANTITY, OR OTHER PROVISIONS OF A**  
26 **PROCUREMENT CONTRACT, INCLUDING MODIFICATIONS REQUIRED DUE TO**  
27 **CHANGES IN LAW OR REGULATION THAT INCREASE THE CONTRACTOR’S COST OF OR**  
28 **TIME FOR PERFORMANCE OF THE CONTRACT; AND**

29                   **(2) IS ACCOMPLISHED BY MUTUAL ACTION OF THE PARTIES TO THE**  
30 **PROCUREMENT CONTRACT.**

31           **[(h)] (J)** “County” means a county of the State and, unless expressly provided  
32 otherwise, Baltimore City.

1            **[(i)] (K)**        “Energy performance contract” means an agreement for the provision  
2 of energy services, including electricity, heating, ventilation, cooling, steam, or hot water,  
3 in which a person agrees to design, install, finance, maintain, or manage energy systems  
4 or equipment to improve the energy efficiency of a building or facility in exchange for a  
5 portion of the energy savings.

6            **[(j)] (L)**        (1)        “Engineering services” means professional or creative work that:

7                            (i)        is performed in connection with any utility, structure, building,  
8 machine, equipment, or process, including structural, mechanical, plumbing, electrical,  
9 geotechnical, and environmental engineering; and

10                          (ii)        requires engineering education, training, and experience in the  
11 application of special knowledge of the mathematical, physical, and engineering sciences.

12                          (2)        “Engineering services” includes consultation, investigation, evaluation,  
13 planning, design, and inspection of construction to interpret and ensure compliance with  
14 specifications and design within the scope of inspection services.

15                          (3)        “Engineering services” does not include services provided in connection  
16 with an energy performance contract.

17            **[(k)] (M)**        “Invitation for bids” means any document used for soliciting bids under  
18 § 13–103 of this article.

19            **[(l)] (N)**        “Person” means an individual, receiver, trustee, guardian, personal  
20 representative, fiduciary, or representative of any kind and any partnership, firm,  
21 association, corporation, or other entity.

22            **[(m)] (O)**        “Primary procurement units” means:

23                          (1)        the State Treasurer;

24                          (2)        the Department of General Services;

25                          (3)        the Department of Transportation;

26                          (4)        the University System of Maryland;

27                          (5)        the Maryland Port Commission;

28                          (6)        the Morgan State University; and

29                          (7)        the St. Mary’s College of Maryland.

30            **[(n)] (P)**        (1)        “Procurement” means the process of:

1 (i) leasing real or personal property as lessee; or

2 (ii) buying or otherwise obtaining supplies, services, construction,  
3 construction related services, architectural services, engineering services, or services  
4 provided under an energy performance contract.

5 (2) "Procurement" includes the solicitation and award of procurement  
6 contracts and all phases of procurement contract administration.

7 **[(o)] (Q)** (1) "Procurement contract" means an agreement in any form entered  
8 into by a unit for procurement.

9 (2) "Procurement contract" does not include:

10 (i) a collective bargaining agreement with an employee  
11 organization;

12 (ii) an agreement with a contractual employee, as defined in §  
13 1–101(d) of the State Personnel and Pensions Article;

14 (iii) a Medicaid, Judicare, or similar reimbursement contract for  
15 which law sets:

16 1. user or recipient eligibility; and

17 2. price payable by the State; or

18 (iv) a Medicaid contract with a managed care organization, as  
19 defined in § 15–101(e) of the Health – General Article as to which regulations adopted by  
20 the Department establish:

21 1. recipient eligibility;

22 2. minimum qualifications for managed care organizations;  
23 and

24 3. criteria for enrolling recipients in managed care  
25 organizations.

26 **[(p)] (R)** "Procurement officer" means an individual authorized by a unit to:

27 (1) enter into a procurement contract;

28 (2) administer a procurement contract; or

1                   (3)    make determinations and findings with respect to a procurement  
2 contract.

3            [(q)] (S)    “Proposal” means a response to any solicitation other than an invitation  
4 for bids.

5            [(r)] (T)    “Request for proposals” means any document used for soliciting  
6 proposals.

7            [(s)] (U)    “Responsible bidder or offeror” means a person who:

8                   (1)    has the capability in all respects to perform fully the requirements for  
9 a procurement contract; and

10                   (2)    possesses the integrity and reliability that will ensure good faith  
11 performance.

12           [(t)] (V)    “Responsive bid” means a bid that:

13                   (1)    is submitted under § 13–103 of this article; and

14                   (2)    conforms in all material respects to the invitation for bids.

15           [(u)] (W)    (1)    Except as provided in paragraph (3) of this subsection, “services”  
16 means:

17                   (i)    the labor, time, or effort of a contractor; and

18                   (ii)   any product or report necessarily associated with the rendering  
19 of a service.

20                   (2)    “Services” includes services provided by attorneys, accountants,  
21 physicians, consultants, and other professionals who are independent contractors.

22                   (3)    “Services” does not include:

23                   (i)    construction related services;

24                   (ii)   architectural services;

25                   (iii)  engineering services; or

26                   (iv)   energy performance contract services.

27           [(v)] (X)    “State” means:

1 (1) a state, possession, territory, or commonwealth of the United States; or

2 (2) the District of Columbia.

3 **[(w)] (Y)** (1) “State correctional facilities” means correctional institutions,  
4 and all places of correctional confinement, that are located within the State of Maryland  
5 and are primarily operated by the Maryland State government.

6 (2) “State correctional facilities” includes Patuxent Institution.

7 **[(x)] (Z)** (1) “Supplies” means:

8 (i) insurance;

9 (ii) tangible personal property;

10 (iii) printing; and

11 (iv) services necessarily associated with insurance or tangible  
12 personal property.

13 (2) “Supplies” does not include:

14 (i) an interest in real property; or

15 (ii) tangible personal property acquired or used in connection with  
16 an energy performance contract.

17 **[(y)] (AA)** (1) “Unit” means an officer or other entity that is in the Executive  
18 Branch of the State government and is authorized by law to enter into a procurement  
19 contract.

20 (2) “Unit” does not include:

21 (i) a bistate, multistate, bicounty, or multicounty governmental  
22 agency; or

23 (ii) a special tax district, sanitary district, drainage district, soil  
24 conservation district, water supply district, or other political subdivision of the State.

25 13–104.

26 **(H) (1) ON REQUEST OF AN UNSUCCESSFUL OFFEROR, THE**  
27 **PROCUREMENT OFFICE OF A UNIT SHALL PROVIDE A DEBRIEFING OF A CONTRACT**  
28 **AWARD.**

1           **(2) EXCEPT FOR INFORMATION SUBJECT TO A CONFIDENTIALITY**  
2 **AGREEMENT, A DEBRIEFING REQUIRED UNDER PARAGRAPH (1) OF THIS**  
3 **SUBSECTION SHALL INCLUDE ALL RELEVANT INFORMATION OBTAINED FROM A**  
4 **PROPOSAL BY, OR DISCUSSIONS WITH, A COMPETING OFFEROR THAT IS**  
5 **REASONABLY NECESSARY TO DETERMINE:**

6           **(I) WHETHER ALL EVALUATION PROCEDURES REQUIRED BY**  
7 **LAW HAVE BEEN PROPERLY INTERPRETED AND PERFORMED;**

8           **(II) WHETHER THE PROCUREMENT ADVANCES THE PURPOSES**  
9 **AND POLICIES ESTABLISHED UNDER § 11-201 OF THIS ARTICLE;**

10           **(III) WHETHER THE CONDUCT OF UNIT PERSONNEL WAS BIASED,**  
11 **IN BAD FAITH, OR WITHOUT SUBSTANTIAL JUSTIFICATION; OR**

12           **(IV) WHETHER THE UNIT FAILED TO PRODUCE ANY DOCUMENT**  
13 **REQUIRED BY LAW OR REGULATION.**

14           **(3) A PROCUREMENT OFFICER'S FAILURE TO COMPLY WITH THIS**  
15 **SUBSECTION MAY BE REMEDIED BY ORDER OF THE MARYLAND STATE BOARD OF**  
16 **CONTRACT APPEALS.**

17 13-201.

18           [(a) In this subtitle the following words have the meanings indicated.

19           (b) "Change order" means a written order that:

20           (1) is signed by the procurement officer; and

21           (2) directs the contractor to make changes that the procurement contract  
22 authorizes the procurement officer to order without the consent of the contractor.

23           (c) "Contract modification" means a written alteration that:

24           (1) affects specifications, delivery point, date of delivery, period of  
25 performance, price, quantity, or other provisions of a procurement contract; and

26           (2) is accomplished by mutual action of the parties to the procurement  
27 contract.

28           (d) "Cost-reimbursement] **IN THIS SUBTITLE, "COST-REIMBURSEMENT**  
29 **contract" means a procurement contract under which the State reimburses a contractor for**  
30 **fees and other costs that are:**



1 (1) recognized as allowable and allocable under the regulations of the  
2 Board on price and cost principles; and

3 (2) within a stated ceiling.

4 13–212.1.

5 (b) For purposes of subsection (a) of this section, assisting in the drafting of  
6 specifications, an invitation for bids, or a request for proposals for a procurement does not  
7 include:

8 (1) providing descriptive literature, such as catalogue sheets, brochures,  
9 technical data sheets, or standard specification “samples”, whether requested by an  
10 executive unit or provided unsolicited;

11 (2) submitting written or oral comments on a specification prepared by an  
12 executive unit or on a solicitation for a bid or proposal when comments are solicited from  
13 two or more persons as part of a request for information or a prebid or preproposal process;

14 (3) providing specifications for a sole source procurement made in  
15 accordance with § 13–107 of this title;

16 (4) providing architectural and engineering services for:

17 (i) programming, master planning, or other project planning  
18 services; or

19 (ii) the design of a construction project if:

20 1. the design services do not involve lead or prime design  
21 responsibilities or construction phase responsibilities on behalf of the State; and

22 2. A. the anticipated value of the procurement contract at  
23 the time of advertisement is at least \$2,500,000 and not more than \$100,000,000; or

24 B. regardless of the amount of the procurement contract, the  
25 payment to the individual or person for the design services does not exceed \$500,000; [or]

26 (5) for a procurement of health, human, social, or educational services,  
27 comments solicited from two or more persons as part of a request for information, including  
28 written or oral comments on a draft specification, an invitation for bids, or a request for  
29 proposals; **OR**

30 **(6) RECEIVING INFORMATION FROM VENDORS THAT DOES NOT**  
31 **PROVIDE AN UNFAIR COMPETITIVE ADVANTAGE FOR ANY BIDDER OR OFFEROR.**

32 13–218.

- 1 (a) Each procurement contract shall include clauses covering:
- 2 (1) termination for default;
- 3 (2) termination wholly or partly by the State for its convenience if the head  
4 of the primary procurement unit determines that termination is appropriate;
- 5 (3) variations that occur between estimated and actual quantities of work  
6 in a procurement contract;
- 7 (4) liquidated damages, as appropriate;
- 8 (5) specified excuses for nonperformance;
- 9 (6) except for real property leases, the unilateral right of the State to order  
10 in writing:
- 11 (i) changes in the work, if the changes are within the scope of the  
12 procurement contract; and
- 13 (ii) a temporary stop or delay in performance;
- 14 (7) the obligation of the contractor to comply with the political contribution  
15 reporting requirements under Title 14 of the Election Law Article, to which the contractor  
16 may be subject as required under § 17–402 of this article; [and]
- 17 (8) nonvisual access for information technology as required under §  
18 3A–312 of this article; AND
- 19 **(9) A REQUIREMENT FOR A CHANGE ORDER TO COMPENSATE THE**  
20 **CONTRACTOR FOR INCREASES IN THE COST OF AND TIME FOR CONTRACT**  
21 **PERFORMANCE DUE TO CHANGES IN LAW.**
- 22 15–112.
- 23 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, a unit  
24 may not require a prime contractor and a prime contractor may not require a subcontractor  
25 to begin change order work under a contract until the procurement officer for the unit issues  
26 a written change order that specifies whether the work is to proceed, in compliance **WITH**  
27 **ANY CHANGES IN LAW OR REGULATION OR** with the terms of the contract, on:
- 28 (i) an agreed-to price which may include a preestablished catalog  
29 or unit prices based on local prevailing wage rates and equipment and material costs for  
30 each task required for the change order as included in the bid documents at the time of bid;

- 1 (ii) a force account;
- 2 (iii) a construction change directive; or
- 3 (iv) a time and materials basis.

4 15–218.

5 (a) Except as provided under § 15–219 of this subtitle, a procurement officer who  
6 receives a protest [or a contract claim from a contractor] shall comply with this section.

7 (b) (1) On receipt of a protest [or contract claim from a contractor], a  
8 procurement officer:

- 9 (i) shall review the substance of the protest [or contract claim];
- 10 (ii) may request additional information or substantiation through an  
11 appropriate procedure;
- 12 (iii) may discuss with interested parties and, if appropriate, may  
13 conduct negotiations with the person initiating the protest [or contract claim]; and
- 14 (iv) shall comply with any applicable regulations.

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

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

- 19 (i) resolve the protest [or contract claim] by agreement of the  
20 parties;
- 21 (ii) wholly or partly deny the protest [or contract claim]; or
- 22 (iii) wholly or partly grant the relief sought by the person who  
23 submitted the protest [or contract claim].

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

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

- 28 (1) the head of the unit; and

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

3 (e) (1) Except as provided under paragraph (3) of this subsection, the  
4 reviewing authority shall approve, disapprove, or modify the decision of the procurement  
5 officer [within 180 days after receiving the contract claim] **WITHIN 45 DAYS AFTER**  
6 **RECEIVING THE PROTEST** or a longer period to which the parties agree.

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

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

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

13 (f) (1) A decision [not to pay a contract claim] **TO DENY A PROTEST** is a final  
14 action for the purpose of appeal to the Appeals Board.

15 (2) The failure to reach a decision within the time required under  
16 subsection (e) of this section may be deemed, at the option of the [contractor, to be a decision  
17 not to pay the contract claim] **BIDDER OR OFFEROR TO BE A DECISION TO DENY THE**  
18 **PROTEST.**

19 15-219.

20 (a) [Except to the extent a shorter period is prescribed by regulation governing  
21 differing site conditions, a] **A** contractor shall file a written notice of a claim relating to a  
22 procurement contract [for construction] within [30] **90** days after [the basis for the claim  
23 is known or should have been known] **THE EARLIER OF:**

24 **(1) A UNIT DENYING A REQUEST FOR EQUITABLE ADJUSTMENT; OR**

25 **(2) THE PARTIES REACHING AN IMPASSE IN DISCUSSIONS**  
26 **ATTEMPTING TO RESOLVE THEIR DISAGREEMENT REGARDING THE REQUEST.**

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

30 (1) the amount of the contract claim;

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

1 (3) all relevant data and correspondence that may substantiate the  
2 contract claim.

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

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

8 **(H) AT ANY TIME PRIOR TO RECEIVING PAYMENT ON A CLAIM, ON WRITTEN**  
9 **REQUEST BY THE PROCUREMENT OFFICER, THE CONTRACTOR SHALL PROVIDE THE**  
10 **UNIT WITH A CERTIFICATION BY A SENIOR OFFICER OR GENERAL PARTNER OF THE**  
11 **CONTRACTOR OR THE SUBCONTRACTOR, AS APPLICABLE, THAT, TO THE BEST OF**  
12 **THAT PERSON'S KNOWLEDGE AND BELIEF:**

13 **(1) THE CLAIM IS MADE IN GOOD FAITH;**

14 **(2) ALL SUPPORTING DATA IS ACCURATE AND COMPLETE; AND**

15 **(3) THE AMOUNT REQUESTED ACCURATELY REFLECTS THE**  
16 **CONTRACT CLAIM FOR WHICH THE PERSON BELIEVES THE PROCUREMENT AGENCY**  
17 **IS LIABLE.**

18 **[(h)] (I)** 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 (i) has accrued on the retainage from the time of payment of the  
22 semifinal estimate; and

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

24 15-221.2.

25 (a) This section applies to a claim resulting under a contract.

26 (b) The Appeals Board may award to a contractor the reasonable costs of filing  
27 and pursuing a claim **OR DEFENDING AGAINST A CLAIM UNDER § 15-219.1 OF THIS**  
28 **SUBTITLE**, including reasonable attorney's fees, if the Appeals Board finds that the conduct  
29 of the unit in processing a contract claim is in bad faith, without substantial justification,  
30 or in violation of law.

31 (c) The Appeals Board shall adopt regulations to implement this section.

1 15-223.

2 (a) (1) A decision of the Appeals Board is subject to judicial review in  
3 accordance with Title 10, Subtitle 2 of the State Government Article.

4 (2) Any party to an Appeals Board decision, including a unit, may appeal a  
5 final decision of the Appeals Board to [a court of competent jurisdiction] **THE APPELLATE**  
6 **COURT OF MARYLAND.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2025.