

HOUSE BILL 193

P2

(6lr0805)

ENROLLED BILL

— Government, Labor, and Elections/Budget and Taxation —

Introduced by **Delegate Kerr**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

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 certain contract modifications related to
9 changes in State law; altering the required contents of a certain change order;
10 altering certain procedures, time periods, and appeals related to certain protests;
11 altering the time within which a written notice of a claim relating to a certain
12 procurement contract shall be made; applying certain provisions related to a contract
13 claim that applied to construction contracts to certain other procurement contracts;
14 requiring a contractor, on request of a procurement officer, to provide certain
15 information prior to receiving payment on a claim; altering the procedures for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 reviewing and making a certain determination related to a certain contract claim;
2 and generally relating to State procurement procedures.

3 BY adding to

4 Article – State Finance and Procurement
5 Section 13–104(h)
6 Annotated Code of Maryland
7 (2021 Replacement Volume and 2025 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article – State Finance and Procurement
10 Section 13–212.1(b), 13–218(a), 15–112(b)(1), 15–218, and 15–219
11 Annotated Code of Maryland
12 (2021 Replacement Volume and 2025 Supplement)

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

15 **Article – State Finance and Procurement**

16 13–104.

17 **(H) (1) AN UNSUCCESSFUL OFFEROR MAY SUBMIT A REQUEST TO THE**
18 **PROCUREMENT OFFICER FOR A DEBRIEFING OF THE RECOMMENDED CONTRACT**
19 **AWARD.**

20 **(2) AFTER RECEIVING A REQUEST FOR A DEBRIEFING UNDER**
21 **PARAGRAPH (1) OF THIS SUBSECTION, THE PROCUREMENT OFFICER SHALL**
22 **PROVIDE THE DEBRIEFING:**

23 **(I) AS SOON AS IS FEASIBLE AFTER RECEIVING THE REQUEST;**
24 **AND**

25 **(II) BEFORE THE RECOMMENDED CONTRACT AWARD IS**
26 **PRESENTED FOR APPROVAL TO THE HEAD OF THE UNIT OR THE BOARD.**

27 **(3) EXCEPT FOR INFORMATION REASONABLY DETERMINED BY THE**
28 **PROCUREMENT OFFICER TO BE CONFIDENTIAL, PROPRIETARY, OR PRIVILEGED, A**
29 **DEBRIEFING REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
30 **INCLUDE ALL RELEVANT INFORMATION ~~THAT HAS BEEN REQUESTED.~~**

31 **(4) THE OFFICE OF STATE PROCUREMENT SHALL ESTABLISH**
32 **GUIDELINES AND PROCEDURES FOR DEBRIEFINGS, INCLUDING A DEADLINE FOR AN**
33 **UNSUCCESSFUL OFFEROR TO SUBMIT A REQUEST FOR A DEBRIEFING.**

1 13-212.1.

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

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

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

11 (3) providing specifications for a sole source procurement made in
12 accordance with § 13-107 of this title;

13 (4) providing architectural and engineering services for:

14 (i) programming, master planning, or other project planning
15 services; or

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

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

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

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

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

27 **(6) PROVIDING INFORMATION THAT DOES NOT PROVIDE AN UNFAIR**
28 **COMPETITIVE ADVANTAGE FOR ANY BIDDER OR OFFEROR.**

29 13-218.

30 (a) Each procurement contract shall include clauses covering:

31 (1) termination for default;

1 (2) termination wholly or partly by the State for its convenience if the head
2 of the primary procurement unit determines that termination is appropriate;

3 (3) variations that occur between estimated and actual quantities of work
4 in a procurement contract;

5 (4) liquidated damages, as appropriate;

6 (5) specified excuses for nonperformance;

7 (6) except for real property leases, the unilateral right of the State to order
8 in writing:

9 (i) changes in the work, if the changes are within the scope of the
10 procurement contract; and

11 (ii) a temporary stop or delay in performance;

12 (7) the obligation of the contractor to comply with the political contribution
13 reporting requirements under Title 14 of the Election Law Article, to which the contractor
14 may be subject as required under § 17–402 of this article; **[and]**

15 (8) nonvisual access for information technology as required under §
16 3A–312 of this article; **AND**

17 **(9) ~~A REQUIREMENT FOR~~ THE AUTHORIZATION OF A CONTRACTOR TO**
18 **REQUEST A CONTRACT MODIFICATION TO PROVIDE AN EQUITABLE ADJUSTMENT TO**
19 **COMPENSATE THE CONTRACTOR FOR INCREASES IN THE COST OF AND TIME FOR**
20 **CONTRACT PERFORMANCE DUE TO CHANGES IN STATE LAW APPLIED BY THE**
21 **PROCUREMENT UNIT.**

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 STATE 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;

31 (ii) a force account;

1 (iii) a construction change directive; or

2 (iv) a time and materials basis.

3 15–218.

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

7 (b) (1) On receipt of a **TIMELY** 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 **ON ANY LEGAL ISSUES RAISED IN THE**
17 **PROTEST.**

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

20 (i) resolve the protest [or contract claim by agreement of the
21 parties];

22 (ii) wholly or partly deny the protest [or contract claim]; or

23 (iii) wholly or partly grant the relief sought by the person who
24 submitted the protest [or contract claim].

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

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

29 (1) the head of the unit **OR THE HEAD'S DESIGNEE**; and

(2) the head of the principal department or other equivalent unit of which the unit is a part **OR THE HEAD'S DESIGNEE.**

(e) [(1) Except as provided under paragraph (3) of this subsection, the reviewing authority shall approve, disapprove, or modify the decision of the procurement officer within 180 days after receiving the contract claim or a longer period to which the parties agree.

(2) The action of the ~~reviewing authority under this subsection~~ **PROCUREMENT OFFICER** shall be the final action of the unit.

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

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

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

(2) The failure to [reach] **ISSUE** a decision **OR ISSUE A WRITTEN NOTICE OF THE ANTICIPATED DECISION DATE** [within the time required under subsection (e) of this section] **ON THE PROTEST WITHIN ~~60~~ 90 DAYS AFTER RECEIPT** may be deemed, at the **SOLE** option of the [contractor, to be a decision not to pay the contract claim] **PROTESTOR, TO BE A DECISION TO DENY THE PROTEST.**

15-219.

(a) ~~Except to the extent a shorter period is prescribed by regulation governing differing site conditions, a~~ **A** contractor shall file a written notice of a claim relating to a procurement contract [for construction] within ~~[30] 60~~ days after [the basis for the claim is known or should have been known] ~~THE LATER OF:~~

(1) FOR REQUESTS FOR EQUITABLE ADJUSTMENTS, THE LATER OF:

(I) A UNIT DENYING A REQUEST FOR EQUITABLE ADJUSTMENT;
OR

~~(2)~~ **(II) ONE OF THE PARTIES REACHING NOTIFYING THE OTHER PARTY IN WRITING THAT THE NOTIFYING PARTY DETERMINED THE DISCUSSIONS REACHED AN IMPASSE IN DISCUSSIONS ATTEMPTING TO RESOLVE THEIR DISAGREEMENT REGARDING THE REQUEST; AND**

(2) FOR OTHER CLAIMS, THE BASIS FOR THE CLAIM IS KNOWN OR SHOULD HAVE BEEN KNOWN.

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

4 (1) the amount of the contract claim;

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

6 (3) all relevant data and correspondence that may substantiate the
7 contract claim.

8 (c) (1) ON RECEIPT OF A TIMELY CONTRACT CLAIM FROM A
9 CONTRACTOR, A PROCUREMENT OFFICER:

10 (I) SHALL REVIEW THE SUBSTANCE OF THE CONTRACT CLAIM;

11 (II) MAY REQUEST ADDITIONAL INFORMATION OR
12 SUBSTANTIATION THROUGH AN APPROPRIATE PROCEDURE;

13 (III) MAY CONDUCT NEGOTIATIONS WITH THE CONTRACTOR
14 INITIATING THE CONTRACT CLAIM; AND

15 (IV) SHALL COMPLY WITH ANY APPLICABLE REGULATIONS.

16 (2) UNLESS CLEARLY INAPPROPRIATE, THE PROCUREMENT OFFICER
17 SHALL SEEK THE ADVICE OF THE OFFICE OF THE ATTORNEY GENERAL ON ANY
18 LEGAL ISSUES.

19 (D) SUBJECT TO SUBSECTION (C) OF THIS SECTION AND CONSISTENT WITH
20 THE STATE BUDGET AND OTHER APPLICABLE LAWS, THE PROCUREMENT OFFICER
21 SHALL:

22 (1) RESOLVE THE CONTRACT CLAIM BY AGREEMENT OF THE PARTIES;

23 (2) WHOLLY OR PARTLY DENY THE CONTRACT CLAIM; OR

24 (3) WHOLLY OR PARTLY GRANT THE RELIEF SOUGHT BY THE
25 CLAIMANT.

26 [(c)] (E) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (3) OF THIS
27 SUBSECTION, FOR A CONTRACT OTHER THAN A CONSTRUCTION CONTRACT, THE
28 REVIEWING AUTHORITY SHALL APPROVE, DISAPPROVE, OR MODIFY THE DECISION
29 OF THE PROCUREMENT OFFICER WITHIN 180 DAYS AFTER RECEIVING THE
30 CONTRACT CLAIM OR A LONGER PERIOD TO WHICH THE PARTIES AGREE.

1 **(2) THE ACTION OF THE REVIEWING AUTHORITY UNDER THIS**
 2 **SUBSECTION SHALL BE THE FINAL ACTION OF THE UNIT.**

3 **(3) (I) THE REVIEWING AUTHORITY MAY REMAND THE**
 4 **PROCEEDING WITH INSTRUCTIONS TO THE PROCUREMENT OFFICER.**

5 **(II) ON REMAND, IN ACCORDANCE WITH THE REVIEWING**
 6 **AUTHORITY'S INSTRUCTIONS, THE PROCUREMENT OFFICER SHALL PROCEED IN**
 7 **ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.**

8 **(F)** (1) Subject to paragraph (2) of this subsection, **FOR A CONSTRUCTION**
 9 **CONTRACT**, the head of the unit engaged in procurement [of the construction] **OR THE**
 10 **HEAD'S DESIGNEE** shall review the contract claim **AND THE DECISION OF THE**
 11 **PROCUREMENT OFFICER.**

12 (2) If the unit is part of a principal department or other equivalent unit,
 13 the Secretary of the principal department or the equivalent official **OR THE SECRETARY'S**
 14 **DESIGNEE OR THE OFFICIAL'S DESIGNEE** shall review the contract claim **AND THE**
 15 **DECISION OF THE PROCUREMENT OFFICER**, unless review has been delegated by
 16 regulation to the head of the unit.

17 ~~**(3) THE ACTION OF THE PROCUREMENT OFFICER UNDER THIS**~~
 18 ~~**SUBSECTION SHALL BE THE FINAL ACTION OF THE UNIT.**~~

19 ~~**(d)**~~ **(G)** The person who reviews a contract claim under subsection ~~**(e)**~~ **(F)** of this
 20 section shall:

21 (1) investigate the contract claim; and

22 (2) give the contractor written notice of a resolution of the contract claim:

23 (i) within 90 days after receiving the contract claim or a longer
 24 period to which the parties agree, if the amount of the contract claim is not more than the
 25 amount under which the accelerated procedure may be selected before the Appeals Board;
 26 or

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

29 ~~**(e)**~~ ~~**(F)**~~ **(H)** Recovery under a contract claim is not allowed for any expense
 30 incurred:

1 (1) more than [30] **60** days before the [required submission of a notice of a
 2 claim] ~~LAST DAY ON WHICH NOTICE OF A CLAIM IS PERMITTED TO BE FILED~~ under
 3 subsection (a) of this section; or

4 (2) unless the time for submission of a claim is extended under subsection
 5 (b) of this section, more than [120] **150** days before the [required submission of the claim]
 6 ~~LAST DAY ON WHICH NOTICE OF A CLAIM IS PERMITTED TO BE FILED.~~

7 [(f)] ~~(G)~~ **(I)** (1) If the unit determines that it is responsible for a portion but not
 8 all of the amount claimed by the contractor, subject to the terms of the contract, the unit
 9 shall pay the undisputed amount.

10 (2) Payment of the undisputed amount:

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

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

14 [(g) (1)] ~~(H)~~ **(J)** A decision not to pay a contract claim is a final action for the
 15 purpose of appeal to the Appeals Board.

16 [(2) The failure to reach a decision within the time required under
 17 subsection (c) of this section may be deemed, at the option of the contractor, to be a decision
 18 not to pay the contract claim.]

19 ~~**(I) (K) (1) THIS SUBSECTION APPLIES TO ALL CONTRACT CLAIMS,**~~
 20 ~~**INCLUDING CLAIMS THAT ARE PENDING ADMINISTRATIVELY IN COURT ON JULY 1,**~~
 21 ~~**2026.**~~

22 ~~**(2) PRIOR TO AUTHORIZING PAYMENT ON A CLAIM, THE**~~
 23 ~~**PROCUREMENT OFFICER SHALL REQUIRE THE CONTRACTOR TO SUPPLEMENT THE**~~
 24 ~~**CLAIM WITH A CERTIFICATION BY A SENIOR OFFICER OR GENERAL PARTNER OF THE**~~
 25 ~~**CONTRACTOR OR THE SUBCONTRACTOR, AS APPLICABLE, THAT, TO THE BEST OF**~~
 26 ~~**THAT PERSON'S KNOWLEDGE AND BELIEF:**~~

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

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

29 AND

30 ~~**(3) THE AMOUNT REQUESTED ACCURATELY REFLECTS**~~
 31 ~~**THE CONTRACT CLAIM FOR WHICH THE PERSON BELIEVES THE PROCUREMENT**~~
 32 ~~**AGENCY IS LIABLE.**~~

1 ~~[(h)]~~ **(L)** At the time of final payment, the unit shall:

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

3 (2) pay any interest that:

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

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
8 Assembly that:

9 (1) this Act does not apply to claims or protests arising or commencing
10 before the effective date of this Act; and

11 (2) unless mutually agreed on between a contractor and procurement unit,
12 the provisions of § 13-218(a)(9) of the State Finance and Procurement Article do not apply
13 to contracts awarded or entered into before the effective date of this Act.

14 ~~SECTION 2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 ~~July~~ October 1, 2026.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.