

AMENDMENTS TO HB304

- Bracketed items in **bold** are deleted from existing H304 and/or existing law.
- Capitalized items in **bold** are additions to existing HB304 and/or existing law.
- Items in small caps are changes to existing law that were proposed under the original HB304.

STATE FIN. & PROC. ARTICLE:

13-104.

(H) (1) ON REQUEST OF AN [UNSUCCESSFUL] OFFEROR, THE PROCUREMENT [OFFICE OF A UNIT] **OFFICER** SHALL PROVIDE A DEBRIEFING OF A CONTRACT AWARD.

(2) EXCEPT FOR INFORMATION [SUBJECT TO A CONFIDENTIALITY AGREEMENT] **REASONABLY DETERMINED BY THE PROCUREMENT OFFICER TO BE CONFIDENTIAL OR PROPRIETARY**, A DEBRIEFING REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE ALL RELEVANT INFORMATION [OBTAINED FROM A PROPOSAL BY, OR DISCUSSIONS WITH, A COMPETING OFFEROR THAT IS REASONABLY NECESSARY TO DETERMINE:

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

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

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

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

REQUESTED.

(3) A PROCUREMENT OFFICER'S FAILURE TO COMPLY WITH THIS SUBSECTION [MAY BE REMEDIED BY ORDER OF THE MARYLAND STATE BOARD OF CONTRACT APPEALS] **SHALL CONSTITUTE A REBUTTABLE PRESUMPTION THAT THE SELECTION OF THE RECOMMENDED AWARDEE WAS NOT MADE IN ACCORDANCE WITH THE EVALUATION**

CRITERIA SET FORTH IN THE SOLICITATION.

13-218.

(a) (9) A REQUIREMENT FOR [A CHANGE ORDER] AN **EQUITABLE ADJUSTMENT** TO COMPENSATE THE CONTRACTOR FOR INCREASES IN THE COST OF AND TIME FOR CONTRACT PERFORMANCE DUE TO CHANGES IN LAW.

15-218.

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

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

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

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

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

(iv) shall comply with any applicable regulations.

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

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

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

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

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

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

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

(1) the head of the unit; and

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

(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] WITHIN 45 DAYS AFTER RECEIVING THE PROTEST or a longer period to which the parties agree.]**

(2) The action of the reviewing authority under this subsection 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.]

(2) The failure to reach a decision **ON THE PROTEST** within **[the time required under subsection (e) of this section] A REASONABLE TIME** may be deemed, at the **SOLE** option of the [contractor, to be a decision not to pay the contract claim] **[BIDDER OR OFFEROR] 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] **[90] 60** days after the [EARLIER] **LATER** OF:

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

(2) [THE PARTIES REACHING AN IMPASSE IN DISCUSSIONS ATTEMPTING TO RESOLVE THEIR DISAGREEMENT REGARDING THE REQUEST] **A WRITTEN DECLARATION BY EITHER PARTY THAT AN IMPASSE HAS BEEN REACHED IN DISCUSSIONS TO RESOLVE THE REQUEST.**

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

(1) the amount of the contract claim;

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

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

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

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

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

(1) THE CLAIM IS MADE IN GOOD FAITH;

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

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

15-223. *Withdrawn*