

# HOUSE BILL 1166

P2, L1  
HB 1353/22 – HGO

3lr2324

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By: **Delegate Wilson**

Introduced and read first time: February 10, 2023

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Omnibus Procurement Reform Act (“OPRA”) of 2023**

3 FOR the purpose of clarifying the claims and defenses of the parties in certain contract  
4 actions; prohibiting a municipal corporation, county, or the State from impairing  
5 certain rights of a contractor in certain contract actions; requiring the expeditious  
6 disclosure of certain procurement information; authorizing a unit to use competitive  
7 sealed proposals for certain procurements under certain circumstances; altering the  
8 conditions under which certain solicitations may be canceled or certain bids or  
9 proposals may be rejected; prohibiting the Board of Contract Appeals from affirming  
10 certain actions unless the existence of certain conditions is proved by a  
11 preponderance of the evidence; altering the membership of the Appeals Board;  
12 establishing certain requirements for county procurement contracts that use State  
13 funds; applying provisions of the State procurement law regarding contract claims  
14 and protests to certain county procurement contracts; altering the conditions under  
15 which parties to an appeal from a decision about a protest may engage in certain  
16 additional discovery; reducing the time by which the Appeals Board must issue its  
17 final decision on an appeal from a decision about a contract claim; requiring the  
18 Appeals Board to award certain damages and costs under certain circumstances;  
19 expanding the authority of the procurement officer and Appeals Board to award  
20 certain costs; and generally relating to State and county procurement contracts.

21 BY renumbering

22 Article – State Finance and Procurement  
23 Section 17–901 and the subtitle “Subtitle 9. Baltimore City”  
24 to be Section 17–1001 and the subtitle “Subtitle 10. Baltimore City”  
25 Annotated Code of Maryland  
26 (2021 Replacement Volume and 2022 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Courts and Judicial Proceedings  
29 Section 5–5A–01 and 5–5A–02

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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 (2020 Replacement Volume and 2022 Supplement)

3 BY repealing and reenacting, without amendments,  
4 Article – State Finance and Procurement  
5 Section 11–101(a), 11–201(a), and 15–218(a) and (b)  
6 Annotated Code of Maryland  
7 (2021 Replacement Volume and 2022 Supplement)

8 BY adding to  
9 Article – State Finance and Procurement  
10 Section 11–101(j–1); and 17–901 through 17–905 to be under the new subtitle  
11 “Subtitle 9. County Procurements Using State Funds”  
12 Annotated Code of Maryland  
13 (2021 Replacement Volume and 2022 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – State Finance and Procurement  
16 Section 13–104(a), 13–202, 13–206, 15–202, 15–207, 15–215, 15–218(c), 15–221,  
17 15–221.1, and 15–221.2  
18 Annotated Code of Maryland  
19 (2021 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – State Government  
22 Section 12–201  
23 Annotated Code of Maryland  
24 (2021 Replacement Volume and 2022 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
26 That Section(s) 17–901 and the subtitle “Subtitle 9. Baltimore City” of Article – State  
27 Finance and Procurement of the Annotated Code of Maryland be renumbered to be  
28 Section(s) 17–1001 and the subtitle “Subtitle 10. Baltimore City”.

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

31 **Article – Courts and Judicial Proceedings**

32 5–5A–01.

33 (a) (1) Except as otherwise provided by State law, a municipal corporation and  
34 its officers and units may not raise the defense of sovereign immunity in a court of the State  
35 in a contract action based on a written contract executed on behalf of the municipal  
36 corporation or its units by an official or employee acting within the scope of the official’s or  
37 employee’s authority.

1           **(2) IN A CONTRACT ACTION UNDER PARAGRAPH (1) OF THIS**  
2 **SUBSECTION, THE PARTIES SHALL BE SUBJECT TO THE SAME CLAIMS AND**  
3 **DEFENSES, LEGAL AND EQUITABLE, AS WOULD APPLY IN THE ABSENCE OF**  
4 **SOVEREIGN IMMUNITY.**

5           (b) In a contract action described in subsection (a) of this section, a municipal  
6 corporation and its officers and units are not liable for punitive damages.

7           (c) A claim is barred unless the claimant files suit within the later of 1 year after:

8               (1) The date on which the claim arose; or

9               (2) The date of completion of the contract that gave rise to the claim.

10          (d) The governing body of a municipal corporation shall make available adequate  
11 money to satisfy any final judgment, after any right of appeal is exhausted, against the  
12 municipal corporation or its officers or units in a contract action under this section.

13          (e) (1) A municipal corporation may require, in connection with a construction  
14 contract to which the municipal corporation is a party, that a dispute regarding the terms  
15 of or performance under the contract be subject to a final, binding determination by:

16               (i) A neutral person selected by, or under a procedure established  
17 by, the highest executive authority of the municipal corporation; or

18               (ii) If the other party to the dispute does not accept as neutral the  
19 person selected under item (i) of this paragraph, an arbitration panel composed of:

20                   1. One member designated by the highest executive  
21 authority of the municipal corporation;

22                   2. One member designated by the other party to the dispute;  
23 and

24                   3. One member to be selected by mutual agreement of the  
25 two designated members from lists submitted by the parties to the dispute.

26          (2) Except as provided in paragraph (3) of this subsection, a municipal  
27 corporation may not require, in connection with a construction contract to which the  
28 municipal corporation is a party, that a dispute involving at least \$10,000 regarding the  
29 terms of or performance under the contract be subject to a final, binding determination  
30 made by an officer or official body of the municipal corporation.

31          (3) A municipal corporation may require, in connection with a construction  
32 contract to which the municipal corporation is a party, that questions of fact arising from a  
33 dispute involving at least \$10,000 regarding the terms of or performance under the contract

1 be subject to a determination by an officer or official body of the municipal corporation if  
2 the decision of the officer or official body is subject to judicial review on the record.

3 **(F) NOTWITHSTANDING ANY OTHER LAW OR CONTRACT PROVISION, IN A**  
4 **CONTRACT ACTION WHERE THE CONTRACT IS FUNDED IN WHOLE OR IN PART WITH**  
5 **STATE FINANCIAL ASSISTANCE, REGARDLESS OF THE STATE'S SOURCE OF FUNDS, A**  
6 **MUNICIPAL CORPORATION MAY NOT IMPAIR THE RIGHT OF THE CONTRACTOR TO**  
7 **ELECT TO HAVE THE DISPUTE RESOLVED BY THE STATE BOARD OF CONTRACT**  
8 **APPEALS OR IN DE NOVO PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION.**

9 **(G) SUBSECTIONS (B) AND (F) OF THIS SECTION APPLY TO A CONTRACTOR'S**  
10 **CLAIMS RELATED TO A CONTRACT IN WHICH THE FINAL PAYMENT HAS NOT BEEN**  
11 **AGREED ON BY THE PARTIES.**

12 5-5A-02.

13 (a) **(1)** Except as otherwise provided by State law, a county and its officers and  
14 units may not raise the defense of sovereign immunity in a court of the State in a contract  
15 action based on a written contract executed on behalf of the county or its units by an official  
16 or employee acting within the scope of the official's or employee's authority.

17 **(2) IN A CONTRACT ACTION UNDER PARAGRAPH (1) OF THIS**  
18 **SUBSECTION, THE PARTIES SHALL BE SUBJECT TO THE SAME CLAIMS AND**  
19 **DEFENSES, LEGAL AND EQUITABLE, AS WOULD APPLY IN THE ABSENCE OF**  
20 **SOVEREIGN IMMUNITY.**

21 (b) In a contract action described in subsection (a) of this section, a county and its  
22 officers and units are not liable for punitive damages.

23 (c) A claim is barred unless the claimant files suit within the later of 1 year after:

24 (1) The date on which the claim arose; or

25 (2) The date of completion of the contract that gave rise to the claim.

26 (d) The governing body of a county shall make available adequate money to  
27 satisfy any final judgment, after any right of appeal is exhausted, against the county or its  
28 officers or units in a contract action under this section.

29 (e) (1) A county may require, in connection with a construction contract to  
30 which the county is a party, that a dispute regarding the terms of or performance under  
31 the contract be subject to a final, binding determination by:

32 (i) A neutral person selected by, or under a procedure established  
33 by, the highest executive authority of the county; or

1 (ii) If the other party to the dispute does not accept as neutral the  
2 person selected under item (i) of this paragraph, an arbitration panel composed of:

3 1. One member designated by the highest executive  
4 authority of the county;

5 2. One member designated by the other party to the dispute;  
6 and

7 3. One member to be selected by mutual agreement of the  
8 two designated members from lists submitted by the parties to the dispute.

9 (2) Except as provided in paragraph (3) of this subsection, a county may  
10 not require, in connection with a construction contract to which the county is a party, that  
11 a dispute involving at least \$10,000 regarding the terms of or performance under the  
12 contract be subject to a final, binding determination made by an officer or official body of  
13 the county.

14 (3) A county may require, in connection with a construction contract to  
15 which the county is a party, that questions of fact arising from a dispute involving at least  
16 \$10,000 regarding the terms of or performance under the contract be subject to a  
17 determination by an officer or official body of the county if the decision of the officer or  
18 official body is subject to judicial review on the record.

19 **(F) NOTWITHSTANDING ANY OTHER LAW OR CONTRACT PROVISION, IN A**  
20 **CONTRACT ACTION IN WHICH THE CONTRACT IS FUNDED IN WHOLE OR IN PART WITH**  
21 **STATE FINANCIAL ASSISTANCE, REGARDLESS OF THE STATE'S SOURCE OF FUNDS, A**  
22 **COUNTY MAY NOT IMPAIR THE RIGHT OF THE CONTRACTOR TO ELECT TO HAVE THE**  
23 **DISPUTE RESOLVED BY THE STATE BOARD OF CONTRACT APPEALS OR IN DE NOVO**  
24 **PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION.**

25 **(G) SUBSECTIONS (B) AND (F) OF THIS SECTION APPLY TO A CONTRACTOR'S**  
26 **CLAIMS RELATED TO A CONTRACT WHERE THE FINAL PAYMENT HAS NOT BEEN**  
27 **AGREED ON BY THE PARTIES.**

## 28 Article – State Finance and Procurement

29 11–101.

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

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

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

1           **(J-1) “EQUITABLE ADJUSTMENT” MEANS A REMEDY, GRANTED BY THE**  
2 **PROCUREMENT OFFICER OR BY THE APPEALS BOARD, AVAILABLE TO A**  
3 **CONTRACTOR WHEN THE COSTS OF PERFORMANCE TO THE CONTRACTOR ARE**  
4 **AFFECTED BY A CHANGE:**

5                   **(1) IN LAW OR REGULATION; OR**

6                   **(2) IN WORK REQUIRED UNDER THE CONTRACT.**

7 11-201.

8           (a) The purposes and policies of this Division II include:

9                   (1) providing for increased confidence in State procurement;

10                  (2) ensuring fair and equitable treatment of all persons who deal with the  
11 State procurement system;

12                  (3) providing safeguards for maintaining a State procurement system of  
13 quality and integrity;

14                  (4) fostering effective broad-based competition in the State through  
15 support of the free enterprise system;

16                  (5) promoting increased long-term economic efficiency and responsibility  
17 in the State by encouraging the use of recycled materials;

18                  (6) providing increased economy in the State procurement system;

19                  (7) getting the maximum benefit from the purchasing power of the State;

20                  (8) simplifying, clarifying, and modernizing the law that governs State  
21 procurement;

22                  (9) allowing the continued development of procurement regulations,  
23 policies, and practices in the State; and

24                  (10) promoting development of uniform State procurement procedures to the  
25 extent possible.

26 13-104.

27           (a) **(1)** Competitive sealed proposals is the preferred method for human, social,  
28 cultural, or educational services.

1           **(2) A UNIT MAY USE COMPETITIVE SEALED PROPOSALS FOR THE**  
2 **PROCUREMENT OF GOODS OR SERVICES OTHER THAN THOSE SPECIFIED IN**  
3 **PARAGRAPH (1) OF THIS SUBSECTION IF THE PROCUREMENT OFFICER, WITH THE**  
4 **CONSENT OF THE HEAD OF THE UNIT, DETERMINES THAT COMPETITIVE SEALED**  
5 **BIDDING:**

6                   **(I) IS UNABLE TO MEET THE UNIT'S MINIMUM REQUIREMENTS;**  
7 **AND**

8                   **(II) WOULD CONFLICT WITH THE PURPOSES AND POLICIES OF §**  
9 **11-201(A) OF THIS DIVISION II.**

10 13-202.

11           (a) After a solicitation is issued and until a recommendation is made by a  
12 procurement officer, a procurement officer [may] **SHALL** disclose to a person outside the  
13 Executive Department [only]:

14                   (1) whether a decision has been made regarding a solicitation; and

15                   (2) information that is available to the public under Title 4, Subtitles 1  
16 through 5 of the General Provisions Article.

17           (b) After a solicitation is issued, a procurement officer shall record and include in  
18 the procurement file the following information from an inquiry from a source outside the  
19 Executive Department:

20                   (1) the date and time of the inquiry;

21                   (2) the name and affiliation of the person making the inquiry; and

22                   (3) the substance and nature of the inquiry.

23           (c) A procurement officer shall maintain a file on each procurement that includes:

24                   (1) a record of all inquiries required to be recorded under subsection (b) of  
25 this section;

26                   (2) all written solicitations by an agency or unit;

27                   (3) all offers received;

28                   (4) all internal and external correspondence regarding the procurement;

1 (5) written documentation from the procurement officer describing efforts  
2 to confirm the information in the affidavits submitted by the successful bidder or offeror;  
3 and

4 (6) the final contract.

5 **(D) THE PROCUREMENT OFFICER SHALL EXPEDITIOUSLY DISCLOSE THE**  
6 **FOLLOWING INFORMATION AFTER MAKING A RECOMMENDATION FOR AWARD OF A**  
7 **PROCUREMENT CONTRACT:**

8 **(1) THE NAME OF ANY SUCCESSFUL BIDDER OR OFFEROR**  
9 **RECOMMENDED FOR AWARD;**

10 **(2) THE RANKING AND NUMERICAL RATINGS, IF ANY, OF TECHNICAL**  
11 **AND FINANCIAL PROPOSALS;**

12 **(3) UNLESS IT IS DETERMINED THAT DISCLOSURE WOULD BE**  
13 **INCONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS**  
14 **DIVISION II, THE BID PRICES OR FINANCIAL PROPOSALS, INCLUDING UNIT PRICES;**  
15 **AND**

16 **(4) THE MINORITY BUSINESS ENTERPRISE PARTICIPATION**  
17 **SCHEDULE, AS DEFINED IN § 14-301 OF THIS DIVISION II.**

18 13-206.

19 (a) (1) A procurement officer shall reject a bid or proposal if the procurement  
20 officer determines that:

21 (i) the bid is nonresponsive or the proposal is unacceptable; or

22 (ii) the bidder or offeror is not responsible.

23 (2) The procurement officer shall include a determination under this  
24 subsection in the procurement file.

25 (b) **(1) [If] SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,**  
26 **IF, with the approval of the Board, a unit determines that it is fiscally [advantageous or**  
27 **otherwise in the best interests of the State] NECESSARY OR CONSISTENT WITH THE**  
28 **PURPOSES AND POLICIES OF § 11-201(A) OF THIS DIVISION II, the unit may:**

29 **[(1)] (I) cancel an invitation for bids, a request for proposals, or other**  
30 **solicitation; or**

31 **[(2)] (II) reject all bids or proposals.**



1           **(2) BEFORE TAKING AN ACTION AUTHORIZED UNDER PARAGRAPH (1)**  
2 **OF THIS SUBSECTION, A UNIT SHALL MAKE A WRITTEN DETERMINATION THAT THE**  
3 **ACTION IS FISCALLY NECESSARY OR CONSISTENT WITH THE PURPOSES AND**  
4 **POLICIES OF § 11-201(A) OF THIS DIVISION II AND INCLUDE THE DETERMINATION**  
5 **IN THE PROCUREMENT FILE.**

6           **(3) A UNIT MAY NOT TAKE AN ACTION AUTHORIZED UNDER**  
7 **PARAGRAPH (1) OF THIS SUBSECTION IN ORDER TO AVOID A DECISION ON A**  
8 **PENDING PROTEST OR APPEAL REGARDING A SOLICITATION OR THE FORMATION OF**  
9 **A PROCUREMENT CONTRACT UNLESS THE UNIT FINDS A COMPELLING REASON FOR**  
10 **THE ACTION.**

11           **(c) (1) IN THE EVENT OF AN APPEAL FROM THE FINAL DECISION OF A**  
12 **UNIT ON A PROTEST REGARDING AN ACTION TAKEN UNDER SUBSECTION (B) OF THIS**  
13 **SECTION, THE MARYLAND STATE BOARD OF CONTRACT APPEALS MAY NOT AFFIRM**  
14 **THE UNIT'S ACTION UNLESS THE UNIT PROVES, BY A PREPONDERANCE OF THE**  
15 **EVIDENCE, THAT THE ACTION IS FISCALLY NECESSARY OR CONSISTENT WITH THE**  
16 **PURPOSES AND POLICIES OF § 11-201(A) OF THIS DIVISION II.**

17           **(2) THE MARYLAND STATE BOARD OF CONTRACT APPEALS SHALL**  
18 **AWARD DAMAGES TO COMPENSATE A SUCCESSFUL APPELLANT IN AN APPEAL**  
19 **UNDER THIS SUBSECTION FOR COSTS INCURRED BY THE APPELLANT TO FILE AND**  
20 **PURSUE THE PROTEST AND SUCCESSFUL APPEAL, INCLUDING REASONABLE**  
21 **ATTORNEY'S FEES, FEES FOR EXPERT WITNESSES, AND FEES FOR TECHNICAL**  
22 **CONSULTANTS INCURRED AT THE UNIT AND APPEALS BOARD LEVELS.**

23           **[(c)] (D)** A procurement officer may determine that a person is not a responsible  
24 bidder or offeror for:

25           (1) unreasonable failure to supply information promptly in connection with  
26 a determination of responsibility under subsection (a) of this section; or

27           (2) any other reason indicating that the person does not have:

28           (i) the capability in all respects to perform fully the requirements  
29 for a procurement contract; or

30           (ii) the integrity and reliability that will ensure good faith  
31 performance.

32 15-202.

1           **(A)** Except to the extent authorized by regulation by the Board, this subtitle does  
2 not apply to a protest concerning any act or omission by a procurement agency under Title  
3 14, Subtitle 6 of this article.

4           **(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SUBTITLE**  
5 **APPLIES TO A PROTEST OR CONTRACT CLAIM INVOLVING ANY COUNTY**  
6 **PROCUREMENT CONTRACT THAT IS SUBJECT TO TITLE 17, SUBTITLE 9 OF THIS**  
7 **DIVISION II.**

8 15–207.

9           (a) (1) The Appeals Board consists of 6 members appointed by the Governor  
10 with the advice and consent of the Senate.

11                   **(2) THE GOVERNOR SHALL APPOINT:**

12                           **(I) AT LEAST ONE MEMBER ON THE RECOMMENDATION OF THE**  
13 **PRESIDENT OF THE SENATE; AND**

14                           **(II) AT LEAST ONE MEMBER ON THE RECOMMENDATION OF THE**  
15 **SPEAKER OF THE HOUSE.**

16                   **[(2)] (3)** An appeal before the Appeals Board shall be heard by a panel of  
17 not more than 3 members designated by the Chairman.

18           (b) Each member of the Appeals Board shall:

19                   (1) be qualified to serve in a quasi-judicial capacity; and

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

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

23           (d) (1) The term of a member is 5 years.

24                   (2) The terms of members are staggered as required by the terms provided  
25 for members of the Appeals Board on October 1, 1988.

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

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

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

1 15–215.

2 (a) In this Part III of this subtitle the following words have the meanings  
3 indicated.

4 (b) (1) “Contract claim” means a claim that relates to a procurement contract  
5 **OR A COUNTY PROCUREMENT CONTRACT THAT USES STATE FUNDS, IN WHOLE OR IN**  
6 **PART, FOR PROCUREMENT.**

7 (2) “Contract claim” includes a claim about the performance, breach,  
8 modification, or termination of the procurement contract **OR COUNTY PROCUREMENT**  
9 **CONTRACT.**

10 (c) **“PROCUREMENT OFFICER” INCLUDES A COUNTY PROCUREMENT**  
11 **OFFICER, AS DEFINED IN § 17–901 OF THIS DIVISION II, WHEN THE CONTRACT**  
12 **CLAIM OR PROTEST RELATES TO A COUNTY PROCUREMENT CONTRACT.**

13 (D) (1) “Protest” means a complaint that relates to the formation of a  
14 procurement contract **OR A COUNTY PROCUREMENT CONTRACT THAT USES STATE**  
15 **FUNDS, IN WHOLE OR IN PART, FOR PROCUREMENT.**

16 (2) “Protest” includes a complaint about:

17 (i) the qualifications of a bidder or offeror; or

18 (ii) the determination of the successful bidder or offeror.

19 (E) **“UNIT” AND “UNIT PERSONNEL” INCLUDE A COUNTY PROCUREMENT**  
20 **UNIT, AS DEFINED IN § 17–901 OF THIS DIVISION II, AND COUNTY PROCUREMENT**  
21 **UNIT PERSONNEL WHEN THE CONTRACT CLAIM OR PROTEST RELATES TO A COUNTY**  
22 **PROCUREMENT CONTRACT.**

23 15–218.

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

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

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

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

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

3 (iv) shall comply with any applicable regulations.

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

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

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

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

10 (iii) wholly or partly grant the relief sought by the person who  
11 submitted the protest or contract claim, **INCLUDING GRANT THE REMEDY OF AN**  
12 **EQUITABLE ADJUSTMENT OF THE CONTRACT SUM AND TIME TO PERFORM THE**  
13 **CONTRACT, AS CHANGED.**

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

16 15–221.

17 (a) If a person appeals the decision of a unit about a protest, the Appeals Board  
18 shall:

19 (1) give that case priority over other matters not involving protests before  
20 the Appeals Board; and

21 (2) decide it expeditiously.

22 (b) (1) For any appeal, the Appeals Board may require each party to file a brief.

23 (2) If briefs are required, the Appeals Board shall establish the order and  
24 time limits for filing briefs after consultation with both parties.

25 (c) Except as provided in subsection (d) of this section, in a case before the  
26 Appeals Board, a party may obtain discovery about any matter that:

27 (1) is not privileged; and

28 (2) is relevant to the subject matter involved in that case.

29 (d) In an appeal from a decision about a protest, discovery shall be limited to  
30 requests for the production of documents unless the Appeals Board determines that

1 [extraordinary circumstances require additional limited discovery to avoid substantial  
2 unfairness or prejudice] **REASONABLE CIRCUMSTANCES EXIST THAT SUPPORT  
3 ADDITIONAL DISCOVERY, CONSISTENT WITH THE PROCEDURES OF THE CIRCUIT  
4 COURT.**

5 (e) In an appeal from a decision about a contract claim, unless both parties agree  
6 to a longer period, the Appeals Board shall issue its final decision within [180] **120** days  
7 after the day on which:

8 (1) all briefs have been filed; or

9 (2) if later, the record has been closed.

10 15–221.1.

11 (a) The [Board of Contract Appeals may] **APPEALS BOARD SHALL** award a  
12 prospective bidder or offeror, a bidder, or an offeror the reasonable costs of filing and  
13 pursuing a protest, [not] including attorney’s fees, **FEES FOR EXPERT WITNESSES, AND  
14 FEES FOR TECHNICAL CONSULTANTS INCURRED AT THE AGENCY AND APPEALS  
15 BOARD LEVELS**, if:

16 (1) the prospective bidder or offeror, bidder, or offeror appeals the final  
17 action of an agency on a protest;

18 (2) the [Board of Contract Appeals] **APPEALS BOARD** sustains the appeal;  
19 and

20 (3) the [Board of Contract Appeals] **APPEALS BOARD** finds that there has  
21 been a violation of law or regulation.

22 (b) The [Board of Contract Appeals] **APPEALS BOARD** shall adopt regulations to  
23 implement this section and to determine what constitutes reasonable costs of filing and  
24 pursuing a protest.

25 15–221.2.

26 (a) [This section only applies to a claim resulting under a contract for  
27 construction] **WHEN THE APPEALS BOARD SUSTAINS A CLAIM FOR AN EQUITABLE  
28 ADJUSTMENT UNDER ANY PROVISION OF A CONTRACT, IN ADDITION TO  
29 COMPENSATION FOR INCREASED COSTS OF, OR TIME FOR THE WORK, THE  
30 EQUITABLE ADJUSTMENT SHALL INCLUDE COMPENSATION FOR ADDITIONAL COSTS  
31 INCURRED DUE TO CHANGES IN THE LAW OR OTHER CONDITIONS SUBSEQUENT TO  
32 THE CONTRACT AWARD.**

1 (b) The Appeals Board may award to a contractor the reasonable costs of filing  
2 and pursuing a claim, including reasonable attorney's fees, if the Appeals Board finds that  
3 the conduct of unit personnel in processing a contract claim is in bad faith, IS  
4 **INCONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS**  
5 **DIVISION II**, or without substantial justification.

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

7 **SUBTITLE 9. COUNTY PROCUREMENTS USING STATE FUNDS.**

8 **17-901.**

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

11 (B) "APPEALS BOARD" MEANS THE MARYLAND STATE BOARD OF  
12 CONTRACT APPEALS.

13 (C) "COUNTY PROCUREMENT CONTRACT" MEANS AN AGREEMENT IN ANY  
14 FORM ENTERED INTO BY A COUNTY PROCUREMENT UNIT FOR PROCUREMENT.

15 (D) "COUNTY PROCUREMENT OFFICER" MEANS AN INDIVIDUAL  
16 AUTHORIZED BY A COUNTY PROCUREMENT UNIT TO:

17 (1) ENTER INTO A COUNTY PROCUREMENT CONTRACT;

18 (2) ADMINISTER A COUNTY PROCUREMENT CONTRACT; OR

19 (3) MAKE DETERMINATIONS AND FINDINGS WITH RESPECT TO A  
20 COUNTY PROCUREMENT CONTRACT.

21 (E) "COUNTY PROCUREMENT UNIT" MEANS AN OFFICER OR OTHER ENTITY  
22 OF A COUNTY GOVERNMENT THAT IS AUTHORIZED TO ENTER INTO A COUNTY  
23 PROCUREMENT CONTRACT.

24 **17-902.**

25 (A) THIS SUBTITLE APPLIES ONLY TO COUNTY PROCUREMENT CONTRACTS  
26 THAT USE STATE FUNDS, IN WHOLE OR IN PART, FOR PROCUREMENT.

27 (B) THE PURPOSES AND POLICIES LISTED IN § 11-201(A) OF THIS DIVISION  
28 II SHALL BE INTERPRETED TO APPLY TO COUNTY PROCUREMENT CONTRACTS THAT  
29 USE STATE FUNDS, IN WHOLE OR IN PART, FOR PROCUREMENT.

1 **17-903.**

2 **THE COUNTY PROCUREMENT OFFICER SHALL EXPEDITIOUSLY DISCLOSE THE**  
3 **FOLLOWING INFORMATION AFTER MAKING A RECOMMENDATION FOR AWARD OF A**  
4 **COUNTY PROCUREMENT CONTRACT:**

5 **(1) THE NAME OF ANY SUCCESSFUL BIDDER OR OFFEROR**  
6 **RECOMMENDED FOR AWARD;**

7 **(2) THE RANKING AND NUMERICAL RATINGS, IF ANY, OF TECHNICAL**  
8 **AND FINANCIAL PROPOSALS;**

9 **(3) UNLESS IT IS DETERMINED THAT DISCLOSURE WOULD BE**  
10 **INCONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS**  
11 **DIVISION II, THE BID PRICES OR FINANCIAL PROPOSALS, INCLUDING UNIT PRICES;**  
12 **AND**

13 **(4) (I) THE MINORITY BUSINESS ENTERPRISE PARTICIPATION**  
14 **SCHEDULE, AS DEFINED IN § 14-301 OF THIS DIVISION II; OR**

15 **(II) THE PARTICIPATION SCHEDULE FOR ANY SIMILAR**  
16 **MINORITY BUSINESS ENTERPRISE PROGRAM ADMINISTERED BY THE COUNTY.**

17 **17-904.**

18 **(A) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF,**  
19 **WITH THE APPROVAL OF THE REVIEWING AUTHORITY OF THE COUNTY, A COUNTY**  
20 **PROCUREMENT UNIT DETERMINES THAT IT IS FISCALLY NECESSARY OR**  
21 **CONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS DIVISION**  
22 **II, THE COUNTY PROCUREMENT UNIT MAY:**

23 **(I) CANCEL AN INVITATION FOR BIDS, A REQUEST FOR**  
24 **PROPOSALS, OR OTHER SOLICITATION; OR**

25 **(II) REJECT ALL BIDS OR PROPOSALS.**

26 **(2) BEFORE TAKING AN ACTION AUTHORIZED UNDER PARAGRAPH (1)**  
27 **OF THIS SUBSECTION, A COUNTY PROCUREMENT UNIT SHALL MAKE A WRITTEN**  
28 **DETERMINATION THAT THE ACTION IS FISCALLY NECESSARY OR CONSISTENT WITH**  
29 **THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS DIVISION II AND INCLUDE**  
30 **THE DETERMINATION IN THE COUNTY'S PROCUREMENT RECORD.**





1 (b) In an action under this subtitle, the State and its officers and units shall have  
2 the immunity from liability described under § 5-522(d) of the Courts Article.

3 (c) **NOTWITHSTANDING ANY OTHER LAW OR CONTRACT PROVISION, IN A**  
4 **CONTRACT ACTION WHERE THE CONTRACT IS FUNDED IN WHOLE OR IN PART WITH**  
5 **STATE FINANCIAL ASSISTANCE, REGARDLESS OF THE STATE'S SOURCES OF FUNDS,**  
6 **THE STATE MAY NOT IMPAIR THE RIGHT OF THE CONTRACTOR TO ELECT TO HAVE**  
7 **THE DISPUTE RESOLVED BY THE STATE BOARD OF CONTRACT APPEALS OR IN DE**  
8 **NOVO PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION.**

9 (d) **SUBSECTIONS (B) AND (C) OF THIS SECTION APPLY TO A CONTRACTOR'S**  
10 **CLAIMS RELATED TO A CONTRACT WHERE THE FINAL PAYMENT HAS NOT BEEN**  
11 **AGREED ON BY THE PARTIES.**

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2023.