

HOUSE BILL 390

P2

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CF SB 310

By: **The Speaker (By Request – Administration) and Delegates Cassilly, Kipke, McConkey, and West**

Introduced and read first time: January 26, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Improving the State Procurement Oversight Structure**

3 FOR the purpose of renaming the Procurement Advisory Council and altering the
4 membership and duties of the Council; altering a certain duty of the Procurement
5 Advisor; repealing a certain provision of law relating to prequalification of certain
6 bidders and offerors; increasing the total value of certain contracts, leases, or other
7 agreements that require a business to file a specified disclosure with the Secretary
8 of State; requiring a certain reviewing authority to approve, disapprove, or modify a
9 certain decision of a procurement officer relating to a contract claim within a certain
10 period of time; providing that a decision not to pay a contract claim is a final action
11 for the purpose of a certain appeal; providing that failure to reach a certain decision
12 within a certain period of time may be deemed a decision not to pay a contract claim;
13 requiring a reviewing authority to comply with a certain provision of law on or before
14 a certain date for certain pending decisions; requiring the Office of the Attorney
15 General to report to the Board of Public Works and certain committees of the General
16 Assembly on or before a certain date; and generally relating to requirements of the
17 procurement law.

18 BY repealing and reenacting, with amendments,
19 Article – State Finance and Procurement
20 Section 12–102(a)(2)(xv), 12–105, 13–221, and 15–218
21 Annotated Code of Maryland
22 (2015 Replacement Volume and 2016 Supplement)

23 BY repealing
24 Article – State Finance and Procurement
25 Section 13–204
26 Annotated Code of Maryland
27 (2015 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – State Finance and Procurement

12–102.

(a) (2) The Procurement Advisor shall:

(xv) be [the principal staff to] **A MEMBER OF** the Procurement
[Advisory] **IMPROVEMENT** Council; and

12–105.

(a) In this section, “Council” means the Procurement [Advisory] **IMPROVEMENT**
Council.

(b) There is a Procurement [Advisory] **IMPROVEMENT** Council.

(c) (1) The Council consists of the following [11] **12** members:

(i) the State Treasurer;

(ii) the Chancellor of the University System of Maryland;

(iii) the Secretary of Budget and Management;

(iv) the Secretary of General Services;

(v) the Secretary of Information Technology;

(vi) the Secretary of Transportation;

[(vii) the Secretary of the Board;

(viii)] **(VII)** the Special Secretary for the Office of Minority Affairs;

**(VIII) THE DIRECTOR OF THE GOVERNOR’S OFFICE OF
PERFORMANCE IMPROVEMENT;**

(IX) THE PROCUREMENT ADVISOR;

[(ix)] **(X)** a representative of local government who has expertise in
local procurement matters, appointed by the Governor with the advice and consent of the
Senate; and

1 [(x)] **(XI)** two members of the general public, at least one of whom
2 has expertise in State procurement matters, appointed by the Governor with the advice
3 and consent of the Senate.

4 (2) (i) If the State Treasurer is unable to attend a meeting of the
5 **[Procurement Advisory]** Council, the Treasurer may designate the Deputy Treasurer to
6 attend the meeting.

7 (ii) If a member of the Council listed in paragraph (1)(ii) through
8 **[(v)] (VIII)** of this subsection is unable to attend a meeting of the **[Procurement Advisory]**
9 Council, the member may designate the **[Chief Procurement Officer of the agency]** **HEAD**
10 **OF PROCUREMENT AT THE EXECUTIVE UNIT** to attend the meeting.

11 (d) The **[Secretary of the Board]** **DIRECTOR OF THE GOVERNOR'S OFFICE OF**
12 **PERFORMANCE IMPROVEMENT** is Chairman of the Council.

13 (e) The Council shall meet at least quarterly each year.

14 (f) The **[Procurement Advisor]** is the principal staff of the Council and the
15 Council shall have **[any additional]** staff **[that the Board authorizes]** in accordance with
16 the State budget.

17 (g) The Council shall:

18 (1) ensure that the State's procurement system is utilizing the most
19 advanced procurement methods and management techniques, **INCLUDING POLICIES,**
20 **PROCEDURES, AND FORMS FOR ALL PROCUREMENT ACTIVITY AND CONTRACT**
21 **MANAGEMENT;**

22 (2) effect and enhance communication between State units on procurement
23 matters, with an emphasis on disseminating information on current developments and
24 advances in procurement methods and management;

25 (3) provide a forum for the discussion of specific procurement issues and
26 problems that arise;

27 (4) advise the Board **AND THE GENERAL ASSEMBLY** on problems in the
28 procurement process and make recommendations for improvement of the process; **[and]**

29 (5) review existing procurement regulations to:

30 (i) determine whether they fulfill the intent and purpose of the law,
31 especially as it relates to fostering broad-based competition; and

32 (ii) make recommendations on the regulations, if revising and
33 restructuring them will result in easier understanding and use;

(6) DEVELOP PERFORMANCE METRICS FOR STATE PROCUREMENT ACTIVITY CONDUCTED BY UNITS DURING THE PRECEDING FISCAL YEAR;

(7) OVERSEE THE IMPLEMENTATION OF PROCUREMENT OFFICER TRAINING;

(8) OVERSEE THE MANAGEMENT OF THE EMARYLAND MARKETPLACE AND OTHER INTERNET PROCUREMENT RESOURCES;

(9) OVERSEE THE IMPLEMENTATION OF APPROPRIATE RISK ANALYSIS AND INSURANCE REQUIREMENTS FOR STATE PROCUREMENT; AND

(10) COORDINATE STATE AND LOCAL ENTITIES TO MAXIMIZE USE OF INTERGOVERNMENTAL PURCHASING.

[13–204.

(a) (1) By regulation, each of the primary procurement units may provide for the prequalification of persons as prospective responsible bidders or offerors for procurements other than leases of real property.

(2) Each of the primary procurement units shall keep a register of all prequalified persons.

(3) Persons prequalified as prospective responsible bidders or offerors by a primary procurement unit for procurements of direct or indirect work–related services shall be deemed to be prequalified for the purposes of procurements by the Department of Human Resources of direct or indirect work–related services to benefit current recipients, former recipients or non–custodial parents of children who are current or former recipients of family investment program benefits.

(b) If a primary procurement unit or the Department of Human Resources uses a prequalification procedure for awarding a procurement contract:

(1) a person who is not prequalified may submit a bid or proposal; and

(2) after bid opening or receipt of proposals and before awarding the procurement contract, a procurement officer may determine that:

(i) a person who was not prequalified at the time of bid opening or receipt of proposals is a responsible bidder or offeror; or

(ii) a prequalified person is not a responsible bidder or offeror.]

13–221.

(a) The provisions of this section are broadly applicable and apply to all contracts, leases, or other agreements entered into by the State.

(b) (1) In this section, “beneficial ownership” means:

(i) any ownership interest of 5% or more in a business;

(ii) any ownership interest of 5% or more in 1 or more entities in a chain of parent and subsidiary entities, any 1 of which participates in at least 5% of the capital or profits of a business; or

(iii) possession of an interest that exists under an agreement, contract, relationship, understanding, or other arrangement and entitles a person to benefits substantially equivalent to an ownership interest of 5% or more of a business.

(2) In this section, unless there are special circumstances, an individual is deemed to hold an ownership interest that is held by the individual’s spouse, the individual’s child, or other relative of the individual who lives in the individual’s home.

(c) (1) If, during a calendar year, a business enters into contracts, leases, or other agreements, with the State or its units or both, under which the business is to receive from the State or its units or both a total of ~~[\$100,000]~~ **\$200,000** or more, the business shall file with the Secretary of State a list that contains the name and address of:

(i) any resident agent of the business;

(ii) each officer of the business; and

(iii) if known, each person who has beneficial ownership of the business.

(2) The list shall be filed within 30 days of the date when the total value of the contracts, leases, or other agreements entered into during the calendar year reaches ~~[\$100,000]~~ **\$200,000**.

(3) If a person who has beneficial ownership is unknown to the business, it is sufficient for the business to disclose the legal ownership or the identity of the nominee who holds title for the unknown person.

(d) A business or an officer of a business who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000.

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.

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

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

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

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

8 (iv) shall comply with any applicable regulations.

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

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

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

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

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

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

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

21 (1) the head of the unit; and

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

24 (e) (1) Except as provided under paragraph (3) of this subsection, the
25 reviewing authority shall approve, disapprove, or modify the decision of the procurement
26 officer **WITHIN 180 DAYS AFTER RECEIVING THE CONTRACT CLAIM OR A LONGER**
27 **PERIOD TO WHICH THE PARTIES AGREE.**

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

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

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

5 **(F) (1) A DECISION NOT TO PAY A CONTRACT CLAIM IS A FINAL ACTION**
6 **FOR THE PURPOSE OF APPEAL TO THE APPEALS BOARD.**

7 **(2) THE FAILURE TO REACH A DECISION WITHIN THE TIME REQUIRED**
8 **UNDER SUBSECTION (E) OF THIS SECTION MAY BE DEEMED, AT THE OPTION OF THE**
9 **CONTRACTOR, TO BE A DECISION NOT TO PAY THE CONTRACT CLAIM.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That, for any decision pending
11 review under § 15–218(d) of the State Finance and Procurement Article on the effective
12 date of this Act, a reviewing authority shall comply with § 15–218(e) of the State Finance
13 and Procurement Article, as enacted by Section 1 of this Act, on or before April 1, 2018.

14 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2018,
15 the Office of the Attorney General shall report to the Board of Public Works and, in
16 accordance with § 2–1246 of the State Government Article, the Senate Education, Health,
17 and Environmental Affairs Committee and the House Health and Government Operations
18 Committee on a process for establishing a centralized procurement attorney office within
19 the Office of the Attorney General to represent all State procurement units in matters
20 within the jurisdiction of the Maryland State Board of Contract Appeals.

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2017.