

HOUSE BILL 1353

P2, L1

2lr2522

By: **Delegate Wilson**

Introduced and read first time: February 11, 2022

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Omnibus Procurement Reform Act (“OPRA”) of 2022**

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

17 BY repealing and reenacting, without amendments,
18 Article – State Finance and Procurement
19 Section 11–201(a)
20 Annotated Code of Maryland
21 (2021 Replacement Volume)

22 BY repealing and reenacting, with amendments,
23 Article – State Finance and Procurement
24 Section 13–202, 13–206, 15–202, 15–215, 15–221, 15–221.1, and 15–221.2
25 Annotated Code of Maryland
26 (2021 Replacement Volume)

27 BY adding to
28 Article – State Finance and Procurement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 17–901 through 17–905 to be under the new subtitle “Subtitle 9. County
Procurements Using State Funds”
Annotated Code of Maryland
(2021 Replacement Volume)

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

Article – State Finance and Procurement

11–201.

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

(1) providing for increased confidence in State procurement;

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

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

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

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

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

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

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

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

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

13–202.

(a) After a solicitation is issued and until a recommendation is made by a
procurement officer, a procurement officer may disclose to a person outside the Executive
Department only:

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

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

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

(1) the date and time of the inquiry;

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

(3) the substance and nature of the inquiry.

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

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

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

(3) all offers received;

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

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

(6) the final contract.

(D) AFTER THE BOARD APPROVES A PROCUREMENT CONTRACT OR, IF BOARD APPROVAL IS NOT REQUIRED UNDER LAW, AFTER EXECUTING AND APPROVING A PROCUREMENT CONTRACT, A PROCUREMENT OFFICER SHALL EXPEDITIOUSLY DISCLOSE:

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

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

(3) UNLESS IT IS DETERMINED THAT DISCLOSURE WOULD BE INCONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF THIS

**DIVISION II, THE BID PRICES OR FINANCIAL PROPOSALS, INCLUDING UNIT PRICES;
AND**

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

13-206.

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

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

(ii) the bidder or offeror is not responsible.

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

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

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

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

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

(3) A UNIT MAY NOT TAKE AN ACTION AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ORDER TO AVOID A DECISION ON A PENDING PROTEST REGARDING THE FORMATION OF A PROCUREMENT CONTRACT, UNLESS THE DISPUTE REVEALS A COMPELLING REASON FOR THE ACTION.

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

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

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

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

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

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

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

15–202.

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

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

15–215.

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

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

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

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

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

(2) “Protest” includes a complaint about:

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

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

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

15-221.

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

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

(2) decide it expeditiously.

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

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

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

(1) is not privileged; and

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

(d) In an appeal from a decision about a protest, discovery shall be limited to requests for the production of documents unless the Appeals Board determines that [extraordinary circumstances require additional limited discovery to avoid substantial unfairness or prejudice] **PARTICULAR CIRCUMSTANCES EXIST THAT SUPPORT**

1 **ADDITIONAL DISCOVERY, CONSISTENT WITH THE PROCEDURES OF THE CIRCUIT**
2 **COURT.**

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

6 (1) all briefs have been filed; or

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

8 15–221.1.

9 (a) The [Board of Contract Appeals may] **APPEALS BOARD SHALL** award a
10 prospective bidder or offeror, a bidder, or an offeror the reasonable costs of filing and
11 pursuing a protest, [not] including attorney's fees, **FEES FOR EXPERT WITNESSES, AND**
12 **FEES FOR TECHNICAL CONSULTANTS, if:**

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

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

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

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

22 15–221.2.

23 (a) [This section only applies to a claim resulting under a contract for
24 construction.

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

30 [(c)] **(B)** The Appeals Board shall adopt regulations to implement this section.

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

1 **17-901.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "APPEALS BOARD" MEANS THE MARYLAND STATE BOARD OF
5 CONTRACT APPEALS.

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

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

10 (1) ENTER INTO A COUNTY PROCUREMENT CONTRACT;

11 (2) ADMINISTER A COUNTY PROCUREMENT CONTRACT; OR

12 (3) MAKE DETERMINATIONS AND FINDINGS WITH RESPECT TO A
13 COUNTY PROCUREMENT CONTRACT.

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

17 **17-902.**

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

20 (B) THE PURPOSES AND POLICIES LISTED IN § 11-201(A) SHALL BE
21 INTERPRETED TO APPLY TO COUNTY PROCUREMENT CONTRACTS THAT USE STATE
22 FUNDS, IN WHOLE OR IN PART, FOR PROCUREMENT.

23 **17-903.**

24 AFTER THE BOARD APPROVES A COUNTY PROCUREMENT CONTRACT OR, IF
25 BOARD APPROVAL IS NOT REQUIRED UNDER LAW, AFTER EXECUTING AND
26 APPROVING A COUNTY PROCUREMENT CONTRACT, A COUNTY PROCUREMENT
27 OFFICER SHALL EXPEDITIOUSLY DISCLOSE:

28 (1) THE NAME OF ANY SUCCESSFUL BIDDER OR OFFEROR
29 RECOMMENDED FOR AWARD;

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

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

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

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

17-904.

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

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

(II) REJECT ALL BIDS OR PROPOSALS.

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

(3) A COUNTY PROCUREMENT UNIT MAY NOT TAKE AN ACTION AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ORDER TO AVOID A DECISION ON A PENDING PROTEST REGARDING THE FORMATION OF A COUNTY PROCUREMENT CONTRACT, UNLESS THE DISPUTE REVEALS A COMPELLING REASON FOR THE ACTION.

(B) (1) IN THE EVENT OF AN APPEAL FROM THE FINAL DECISION OF A COUNTY PROCUREMENT UNIT ON A PROTEST REGARDING AN ACTION TAKEN UNDER SUBSECTION (A) OF THIS SECTION, THE APPEALS BOARD MAY NOT AFFIRM THE

1 COUNTY PROCUREMENT UNIT'S ACTION UNLESS THE COUNTY PROCUREMENT UNIT
2 PROVES, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ACTION IS FISCALLY
3 NECESSARY OR CONSISTENT WITH THE PURPOSES AND POLICIES OF § 11-201(A) OF
4 THIS DIVISION II.

5 (2) THE APPEALS BOARD SHALL AWARD DAMAGES TO COMPENSATE
6 A SUCCESSFUL APPELLANT IN AN APPEAL UNDER THIS SUBSECTION FOR COSTS
7 INCURRED BY THE APPELLANT TO FILE AND PURSUE THE PROTEST AND
8 SUCCESSFUL APPEAL, INCLUDING REASONABLE ATTORNEY'S FEES, FEES FOR
9 EXPERT WITNESSES, AND FEES FOR TECHNICAL CONSULTANTS.

10 17-905.

11 IN ACCORDANCE WITH TITLE 15, SUBTITLE 2 OF THIS DIVISION II, THE
12 APPEALS BOARD SHALL HAVE JURISDICTION TO HEAR AND DECIDE ALL APPEALS
13 ARISING FROM THE FINAL ACTION OF A COUNTY PROCUREMENT UNIT ON A PROTEST
14 OR CONTRACT CLAIM CONCERNING A COUNTY PROCUREMENT CONTRACT THAT IS
15 SUBJECT TO THIS SUBTITLE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2022.