

Chapter 821

(Senate Bill 667)

AN ACT concerning

State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

FOR the purpose of ~~requiring~~ authorizing the Maryland State Board of Contract Appeals to award ~~a prospective bidder or offeror, a bidder, or an offeror~~ an interested party reasonable costs of filing and pursuing a protest, including attorney’s fees, if an appeal is sustained and there is a violation of law or regulation; ~~requiring~~ authorizing the Maryland State Board of Contract Appeals to award a contractor under any State contract the reasonable costs of filing and pursuing a claim, including attorney’s fees, if ~~procurement unit personnel act~~ the unit acts in bad faith, without justification, or in violation of law ~~or regulation~~; and generally relating to State procurement contract claims and appeals.

BY repealing and reenacting, without amendments,
 Article – State Finance and Procurement
 Section 15–201
 Annotated Code of Maryland
 (2021 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 15–215, 15–221.1, and 15–221.2
 Annotated Code of Maryland
 (2021 Replacement Volume and 2023 Supplement)

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

Article – State Finance and Procurement

15–201.

In this subtitle, “Appeals Board” means the Maryland State Board of Contract Appeals.

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.

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

(C) “INTERESTED PARTY” MEANS AN ACTUAL OR A PROSPECTIVE BIDDER, OFFEROR, OR CONTRACTOR THAT MAY BE AGGRIEVED BY THE SOLICITATION OR AWARD OF A CONTRACT, OR BY THE PROTEST.

~~[(c)]~~ **(D)** (1) “Protest” means a complaint that relates to the formation of a procurement contract.

(2) “Protest” includes a complaint about:

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

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

15-221.1.

(a) The [Board of Contract Appeals may] **APPEALS BOARD** ~~SHALL~~ **MAY** award ~~a prospective bidder or offeror, a bidder, or an offeror~~ **AN INTERESTED PARTY** the reasonable costs of filing and pursuing a protest, [not] including **REASONABLE** attorney’s fees, if:

(1) the ~~prospective bidder or offeror, bidder, or offeror~~ **INTERESTED PARTY** appeals the final action of an agency on a protest;

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

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

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

15-221.2.

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

(b) The Appeals Board ~~[may]~~ ~~SHALL~~ award to a contractor the reasonable costs of filing and pursuing a claim, including reasonable attorney’s fees, if the Appeals Board ~~finds that the conduct of unit personnel, WITH OR WITHOUT A PROCUREMENT OFFICER,~~

FINDS THAT THE CONDUCT OF THE UNIT in processing a contract claim is in bad faith [or], without substantial justification, **~~OR CONTRARY TO ANY PROVISION OF THIS DIVISION II.~~** **IN VIOLATION OF LAW.**

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 16, 2024.