

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 193

(Delegate Kerr)

Government, Labor, and Elections

Budget and Taxation

State Procurement - Transparency and Procedures

This bill makes changes to State procurement-related processes and requirements affecting (1) change orders and contract modifications; (2) bid protests and contract claims; (3) debriefings for unsuccessful offerors; and (4) procurement ethics. The provisions of the bill do not apply to claims or protests arising or commencing before the effective date of the bill, and, unless mutually agreed on between a contractor and procurement unit, do not apply to contracts awarded or entered into before the effective date of the bill. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: Changes to procurement ethics requirements may lead to an increase in bid protests, which can delay contract execution and lead to cost overruns for the State. However, a reliable estimate is not feasible, as discussed below. Implementation of the bill can be handled with existing resources. Revenues are not affected.

Local Effect: The bill does not materially affect local governmental finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Change Orders and Contract Modifications

Under current law, a “change order” is defined as a written directive signed by a procurement officer that instructs a contractor to make modifications authorized by a

procurement contract without requiring the contractor's consent. A procurement unit cannot require a prime contractor, nor can a prime contractor require a subcontractor, to begin change order work until the procurement officer for the unit has issued a written change order that specifies that the work is to proceed in compliance with the terms of the contract (and the methods of pricing for the work). *The bill* modifies this requirement by allowing the written change order to specify that the work is in compliance with *either* the terms of the contract *or any changes in State law or regulation*.

Current law defines a "contract modification" as a written alteration made through mutual agreement between the parties to a procurement contract. The alteration may involve revisions of specifications, delivery location, delivery date, performance period, price, quantity, or other contract provisions. Any contract modification for an emergency contract that, by itself or in combination with prior modifications, exceeds the small procurement amount, must be reported to the Board of Public Works (BPW) and any appropriate control agency within 15 days of the award being made. Apart from this provision, State law does not regulate contract modifications. However, the Code of Maryland Regulations requires approval from BPW for any modifications with a value of \$50,000 or more.

The bill adds a requirement that all procurement contracts include a provision authorizing a contractor to request a contract modification to provide an equitable adjustment to compensate a contractor for increases in cost and time due to changes in State law. "Equitable adjustment" is not defined in State procurement law but generally refers to a change to a contract price or provision to compensate a contractor for additional costs.

Protests and Contract Claims

Under current law, a "contract claim" means a claim related to a procurement contract that has already been formed and can include issues with performance, breach, modification, or termination of the contract. Contract claims may be asserted by a contractor against the procurement unit, or by the procurement unit against the contractor. A "protest" refers to a complaint made during the formation of a procurement contract and can include complaints about the qualifications of a bidder or offeror, or the determination of which bidder or offeror will receive a contract.

A procurement officer that receives a bid protest or contract claim must review the substance of the protest or claim, discuss with interested parties, and, unless clearly inappropriate, seek the advice of the Office of the Attorney General (OAG). The procurement officer must then either resolve the protest or claim, wholly or partly deny it, or wholly or partly grant relief sought by the person that submitted the protest or claim. This decision must be reviewed by the head of the agency as well as the head of the principal procurement department or agency with jurisdiction over the procurement.

For contract claims, the reviewing authority must approve, disapprove, or modify the decision of the procurement officer within 180 days of receiving the contract claim, or a longer period that the parties agree to; there is no time limit for the review of bid protests. The reviewing authority may also remand the proceeding with instructions to the procurement officer, in which case the procurement officer must go back through the procedures described above. A decision to not pay a contract claim is a final action for the purpose of appeals to the Maryland State Board of Contract Appeals (MSBCA). Failure to reach a decision within the stated time under the law may be deemed a decision not to pay the contract claim.

The bill removes contract claims from these procedures so that the procedures apply only to *timely* protests. After the procurement officer issues a decision on a timely protest in writing, the head of the agency or principal department may designate someone to review the procurement officer's decision on their behalf. The bill also establishes that an agency's failure to reach a decision or issue a written notice of the anticipated decision date on the protest within 90 days after receipt of the protest may be deemed, at the sole option of the protestor, to be a decision to deny the protest.

Current law addresses contract claims specifically for construction contracts (which the bill extends to all contract claims, as described below). A contractor must file a written notice of a contract claim relating to a procurement contract for construction within 30 days after the basis of the claim is known, unless regulations specify a shorter period of time. Within 90 days after submitting a notice of a contract claim under a procurement contract for construction, a contractor must submit a written explanation including the amount of the claim, the facts on which the claim is based, and any relevant data and correspondence that may support the claim. Unless the procurement unit is part of a principal procurement department or agency, or regulations specify otherwise, the head of the procurement unit must review the claim. If the unit is part of a principal procurement department or agency, the department's Secretary must review the claim.

The reviewer of the contract claim must give the contractor written notice of a resolution of the contract claim within 90 or 180 days, depending on the amount of the claim. Recovery under a contract claim is not allowed for any expense incurred more than 30 days before the required submission of a notice of a claim or more than 120 days before the submission of the claim. If a procurement unit determines that it is responsible for a portion but not all of the amount claimed by the contractor, the unit shall pay the undisputed amount. A decision to not pay a contract claim is a final action for the purpose of appeals to MSBCA. Failure to reach a decision within the stated time under the law may be deemed a decision not to pay the contract claim. At the time of final payment, the procurement unit must release the retainage due to the contractor, along with any interest.

The bill applies these provisions to all contract claims rather than those just related to construction. Additionally, it specifies that for requests for equitable adjustments, a contractor must submit a written notice of a claim within 30 days after the later of (1) a procurement unit denying a request for equitable adjustment or (2) one of the parties notifying the other party in writing that the notifying party determined the discussions reached an impasse in negotiations. For other claims, a contractor must submit a written notice of a claim within 30 days after the basis for the claim is known or should have been known. On receipt of a timely contract claim from a contractor, a procurement officer (1) must review the substance of the contract claim; (2) may request additional information or substantiation through an appropriate procedure; (3) may conduct negotiations with the contractor initiating the contract claim; and (4) must comply with any applicable regulations. Unless clearly inappropriate, the procurement officer must seek the advice of OAG on any legal issues. Consistent with the State budget and other applicable laws, the procurement officer must resolve the contract claim by agreement of the parties, wholly or partly deny the contract claim, or wholly or partly grant the relief sought by the claimant. For any contract other than a construction contract, the reviewing authority must approve, disapprove, or modify the decision of the procurement officer within 180 days after receiving the contract claim (or a longer period to which the parties agree). The action of the reviewing authority is the final action of the unit. However, the reviewing authority may remand the proceeding with instructions to the procurement officer.

Also under the bill, for construction contracts, the secretary of the principal procurement unit or designee – or if the unit is not part of a principal department, the head of the unit or designee – must then review the contract claim and the decision of the procurement officer. The reviewer of the contract claim must investigate the contract claim and give the contractor written notice of a resolution of the contract claim within (1) 90 days after receiving the contract claim (or a longer period to which the parties agree), if the claim is \$100,000 or less or (2) 180 days after receiving the contract claim (or a longer period to which the parties agree), if the claim is greater than \$100,000.

The bill also alters the timeline for recovery under a contract claim, stating that recovery is not allowed for any expense incurred (1) more than 60 days before the last day on which notice of a claim is permitted to be filed or (2) unless the time for submission of a claim is extended, more than 150 days before the last day on which notice of a claim is permitted to be filed.

Prior to authorizing payment on a contract claim, the procurement officer must require the contractor to supplement the claim with a certification that, to the best of the contractor's knowledge and belief, the claim is made in good faith, all supporting data is accurate and complete, and that the amount requested accurately reflects the contract claim for which the contractor believes the procurement agency is liable.

Procurement Debriefings for Unsuccessful Offerors

For contracts awarded on a basis other than price alone, *current regulations* allow an unsuccessful offeror to submit a written request for a debriefing within a reasonable time. Upon such a request, a procurement officer familiar with the selection of the contract award must provide a debriefing, which must (1) be limited to discussion of the offeror's proposal without specific discussion of proposals from competing offerors; (2) be factual and consistent with the evaluation of the unsuccessful offeror's proposal; and (3) provide information on areas in which the unsuccessful offeror's technical proposal was deemed weak or deficient. The discussion may include a summary of the procurement officer's rationale for a selection decision, but may not include discussion of the thoughts, notes, or rankings of individual members of an evaluation committee. A summary of the debriefing must be made part of the contract file.

The bill allows an unsuccessful offeror to submit a request to the procurement officer for a debriefing of a contract award. Upon receiving a request for a debriefing, the procurement officer must provide the debriefing as soon as is feasible and before the recommended contract award is presented for approval to the head of the unit or BPW. With the exception of information reasonably determined to be confidential, proprietary, or privileged, the debriefing must include all relevant information that has been requested by the unsuccessful offeror. The Office of State Procurement within the Department of General Services must establish guidelines and procedures for debriefings, including a deadline for an unsuccessful offeror to submit a request for a debriefing.

Conflicts of Interest

Current law prohibits individuals who assist a unit in drafting specifications, invitations for bids, or requests for proposals for a procurement – or in the selection or award process from submitting a bid or proposal for that procurement. It also bars those individuals, or their employers during the period of assistance, from assisting or representing another party, directly or indirectly, in submitting a bid or proposal for the same procurement. Providing assistance does not include, among other things, offering technical information, brochures, literature, or samples; submitting written or oral feedback on draft specifications or solicitations when comments are solicited from at least two individuals as part of the prebid or preproposal process; and providing certain architectural and engineering services, such as planning, programming, or limited design work within specified limits. *The bill* adds that providing information that does not create an unfair competitive advantage for any bidder or offeror does not constitute assisting with a solicitation.

State Expenditures: As agencies are already able to request contract modifications for equitable adjustments, explicitly authorizing them to request modifications under specific circumstances is not expected to affect contract costs.

Altering procurement ethics requirements to allow vendors to provide information to agencies during the development of contract solicitations increases the likelihood that unsuccessful vendors file bid protests claiming that the information provided created an unfair advantage. Even if the protests are not successful, the protests can delay contract execution and, therefore, project completion. Delays in contract award and performance can result in cost overruns for the State, but a reliable estimate is not feasible.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 304 of 2025.

Designated Cross File: SB 213 (Senator Lewis Young) - Budget and Taxation.

Information Source(s): Department of Information Technology; Contract Appeals, State Board of; Department of Commerce; Maryland Department of Emergency Management; Office of the Attorney General; University System of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2026
jg/mcr Third Reader - April 1, 2026
Revised - Amendment(s) - April 1, 2026

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