

HOUSE BILL 426

P2

(7lr0186)

ENROLLED BILL

— *Health and Government Operations/Education, Health, and Environmental Affairs* —

Introduced by **The Speaker (By Request – Administration) and Delegates Cassilly, Kipke, McConkey, ~~and West West~~, Pendergrass, Bromwell, Angel, Cullison, Hayes, Hill, Kelly, Krebs, Metzgar, Miele, Morales, Morgan, Pena-Melnyk, Platt, Rosenberg, Saab, Sample-Hughes, Szeliga, and K. Young**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 Promoting Efficiencies in State Procurement

3 FOR the purpose of altering various provisions of the State procurement law; altering the
4 dollar value threshold that triggers the requirement to publish a certain notice in
5 eMaryland Marketplace regarding certain procurements; expanding the list of the
6 types of procurement methods available to a procurement officer for certain
7 procurements; specifying a preferred procurement method for human, social,
8 cultural, or educational services; establishing qualification based selection as the
9 method of procurement for certain departments for architectural or engineering
10 services; specifying certain parameters, standards, and requirements applicable
11 under the qualification based selection procurement method; ~~requiring~~ authorizing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 certain designated procurement units to adopt the master contracting procurement
 2 method for procurements for certain services, supplies, commodities, or goods;
 3 providing that, under certain circumstances, certain requirements for master
 4 contracts do not apply to master contracts for construction; requiring the Board of
 5 Public Works to adopt certain regulations regarding the solicitation of master
 6 contracts and task orders; repealing the Maryland Architectural and Engineering
 7 Services Act and related provisions of law concerning the General Professional
 8 Services Selection Board in the Department of General Services; ~~increasing, to at~~
 9 ~~least a certain percentage, the amount of payment security a contractor is required~~
 10 ~~to provide before a public body is authorized to award a construction contract;~~
 11 ~~authorizing the head of a public body to reduce the amount of payment security~~
 12 ~~required for certain construction contracts if a certain determination is made;~~
 13 altering the dollar value of the contract for which certain public bodies may require
 14 payment security or performance security for a construction contract; clarifying
 15 provisions of law concerning procurements by the board of trustees or other persons
 16 for a local community college; *clarifying the authority of the board of trustees of a*
 17 *community college to advertise certain bids on eMaryland Marketplace;* providing
 18 that competitive sealed proposals is the preferred procurement method for certain
 19 educational or consultant services; ~~requiring the Maryland Higher Education~~
 20 ~~Commission to conduct a certain study in consultation with certain associations and~~
 21 ~~report to certain committees of the General Assembly on or before a certain date;~~
 22 defining certain terms; repealing obsolete provisions of law; and generally relating
 23 to revisions of the State procurement law.

24 BY repealing and reenacting, without amendments,
 25 Article – State Finance and Procurement
 26 Section 11–203(a)
 27 Annotated Code of Maryland
 28 (2015 Replacement Volume and 2016 Supplement)

29 BY repealing and reenacting, with amendments,
 30 Article – State Finance and Procurement
 31 Section 11–203(b), 13–101, 13–102, 13–103, 13–104, 13–109, 13–402, 15–202, and
 32 17–103
 33 Annotated Code of Maryland
 34 (2015 Replacement Volume and 2016 Supplement)

35 BY adding to
 36 Article – State Finance and Procurement
 37 Section 13–112 and 13–114
 38 Annotated Code of Maryland
 39 (2015 Replacement Volume and 2016 Supplement)

40 BY repealing
 41 Article – State Finance and Procurement

1 Section 13–301 through 13–323 and the subtitle “Subtitle 3. Architectural and
2 Engineering Services”; and 13–401 and the subtitle “Subtitle 4. Streamlined
3 Process for Procurement of Information Technology Services”

4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2016 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Education
8 Section 16–311 and 16–313
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2016 Supplement)

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

13 **Article – State Finance and Procurement**

14 11–203.

15 (a) Except as provided in subsection (b) of this section, this Division II does not
16 apply to:

17 (1) procurement by:

18 (i) the Blind Industries and Services of Maryland;

19 (ii) the Maryland State Arts Council, for the support of the arts;

20 (iii) the Maryland Health and Higher Educational Facilities
21 Authority, if no State money is to be spent on a procurement contract;

22 (iv) the Maryland Industrial Training Program or the Partnership
23 for Workforce Quality Program in the Department of Commerce, for training services or
24 programs for new or expanding businesses or industries or businesses or industries in
25 transition;

26 (v) the Maryland Food Center Authority, to the extent the Authority
27 is exempt under Title 10, Subtitle 2 of the Economic Development Article;

28 (vi) the Maryland Public Broadcasting Commission:

29 1. for services of artists for educational and cultural
30 television productions;

31 2. when planning for or fulfilling the obligations of grants or
32 cooperative agreements that support the educational and cultural activities of the
33 Commission; or

1 3. for procurement contracts needed to implement the
2 repacking requirements of the Federal Spectrum Incentive Act;

3 (vii) public institutions of higher education, for cultural,
4 entertainment, and intercollegiate athletic procurement contracts;

5 (viii) the Maryland State Planning Council on Developmental
6 Disabilities, for services to support demonstration, pilot, and training programs;

7 (ix) the Maryland Historical Trust for:

8 1. surveying and evaluating architecturally, archeologically,
9 historically, or culturally significant properties; and

10 2. other than as to architectural services, preparing historic
11 preservation planning documents and educational material;

12 (x) the University of Maryland, for University College Overseas
13 Programs, if the University adopts regulations that:

14 1. establish policies and procedures governing procurement
15 for University College Overseas Programs; and

16 2. promote the purposes stated in § 11–201(a) of this subtitle;

17 (xi) the Department of Commerce, for negotiating and entering into
18 private sector cooperative marketing projects that directly enhance promotion of Maryland
19 and the tourism industry where there will be a private sector contribution to the project of
20 not less than 50% of the total cost of the project, if the project is reviewed by the Attorney
21 General and approved by the Secretary of Commerce or the Secretary's designee;

22 (xii) the Rural Maryland Council;

23 (xiii) the Maryland State Lottery and Gaming Control Agency, for
24 negotiating and entering into private sector cooperative marketing projects that directly
25 enhance promotion of the Maryland State Lottery and its products, if the cooperative
26 marketing project:

27 1. provides a substantive promotional or marketing value
28 that the lottery determines acceptable in exchange for advertising or other promotional
29 activities provided by the lottery;

30 2. does not involve the advertising or other promotion of
31 alcohol or tobacco products; and

1 (ii) remanufacture and subsequent resale.

2 (b) (1) The following provisions of this Division II apply to each procurement
3 enumerated in subsection (a) of this section:

4 (i) § 11–205 of this subtitle (“Collusion”);

5 (ii) § 10–204 of this article (“Approval for designated contracts”);

6 (iii) Title 12, Subtitle 2 of this article (“Supervision of Capital
7 Expenditures and Real Property Leases”);

8 (iv) § 13–219 of this article (“Required clauses – Nondiscrimination
9 clause”);

10 (v) § 13–221 of this article (“Disclosures to Secretary of State”);

11 (vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for
12 Exempt Units”);

13 (vii) § 15–112 of this article (“Change orders”);

14 (viii) Title 16 of this article (“Suspension and Debarment of
15 Contractors”); and

16 (ix) Title 17 of this article (“Special Provisions – State and Local
17 Subdivisions”).

18 (2) Except for procurement under subsection (a)(1)(i) and (xi) and (2)(i) and
19 (vi) of this section, the provisions of Title 14, Subtitle 3 of this article (“Minority Business
20 Participation”) shall apply to each procurement enumerated in subsection (a) of this
21 section.

22 (3) A procurement by an entity listed in subsection (a)(1)(i) through (xiii)
23 and (xvii) of this section shall be made under procedures that promote the purposes stated
24 in § 11–201(a) of this subtitle.

25 (4) (i) A unit that procures human, social, or educational services from
26 an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland
27 Marketplace notice of a procurement contract or an extension or renewal of a procurement
28 contract if:

29 1. the procurement contract, extension, or renewal costs
30 more than ~~[\$25,000]~~ **\$50,000**; and

1 **(2) A COUNTY, A MUNICIPAL CORPORATION, OR ANY OTHER**
 2 **POLITICAL SUBDIVISION; AND**

3 **(3) ANY UNIT OF THE STATE GOVERNMENT OR A POLITICAL**
 4 **SUBDIVISION.**

5 **(H) “TASK ORDER” MEANS A PROCUREMENT PROCESS IN WHICH ONLY**
 6 **THOSE VENDORS WITH MASTER CONTRACTS MAY COMPETE TO PROVIDE THE**
 7 **SERVICES, SUPPLIES, OR COMMODITIES UNDER THE PROCUREMENT.**

8 13–102.

9 (a) [Except as provided in Subtitle 3 and Subtitle 4 of this title, all procurement
 10 by units shall be by competitive sealed bids unless one of the following methods specifically
 11 is authorized] **THE FOLLOWING PROCUREMENT METHODS ARE AUTHORIZED AT THE**
 12 **PROCUREMENT OFFICER’S DISCRETION, WHERE APPLICABLE:**

13 **(1) COMPETITIVE SEALED BIDS UNDER § 13–103 OF THIS SUBTITLE;**

14 **[(1) (2) competitive sealed proposals under § 13–104 or § 13–105 of this**
 15 **subtitle;**

16 **[(2) (3) noncompetitive negotiation under § 13–106 of this subtitle;**

17 **[(3) (4) sole source procurement under § 13–107 of this subtitle;**

18 **[(4) (5) emergency or expedited procurement under § 13–108 of this**
 19 **subtitle;**

20 **[(5) (6) small procurement under § 13–109 of this subtitle;**

21 **[(6) (7) an intergovernmental cooperative purchasing agreement under**
 22 **§ 13–110 of this subtitle; [or]**

23 **[(7) (8) auction bids under § 13–111 of this subtitle;**

24 **(9) ARCHITECTURAL AND ENGINEERING SERVICES QUALIFICATION**
 25 **BASED SELECTION UNDER § 13–112 OF THIS SUBTITLE; OR**

26 **(10) MASTER CONTRACTING UNDER § 13–113 OF THIS SUBTITLE.**

27 (b) (1) In awarding a procurement contract for human, social, cultural, or
 28 educational service, the preferred method is by competitive sealed proposals under §
 29 13–104 of this subtitle.

1 (2) In awarding a procurement contract for a lease of real property, the
2 preferred method is by competitive sealed proposals under § 13–105 of this subtitle.

3 (3) Procurement under an intergovernmental cooperative purchasing
4 agreement is appropriate in situations where the State is expected to achieve a better price
5 as the result of economies of scale or to otherwise benefit by purchasing in cooperation with
6 another governmental entity.

7 13–103.

8 (a) (1) Whenever procurement is based on competitive sealed bids, a
9 procurement officer shall seek bids by issuing an invitation for bids.

10 (2) Subject to subsection (b) of this section, an invitation for bids shall
11 include:

12 (i) the specifications of the procurement contract, including the
13 expected degree of minority business enterprise participation, as provided in § 14–303(b) of
14 this article;

15 (ii) whether the procurement contract will be awarded based on the
16 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
17 11–202(3) of this article, the bid most favorable to the State;

18 (iii) if the procurement contract will be based on evaluated bid price,
19 the objective measurable criteria by which the lowest evaluated bid price will be
20 determined; and

21 (iv) if the Secretary of General Services, the Secretary of
22 Transportation, or the Chancellor of the University System of Maryland has so designated,
23 the small business preference.

24 (b) (1) Whenever a procurement officer determines that an initial preparation
25 of specifications for price bids is impracticable, the invitation for bids may:

26 (i) include a request for unpriced technical offers or samples; and

27 (ii) direct bidders to submit price bids:

28 1. with the unpriced technical offers or samples; or

29 2. after the unit evaluates the technical offers or samples and
30 finds that they are acceptable under the criteria set forth in the invitation for bids.

31 (2) A unit shall consider the prices submitted by bidders whose technical
32 offers or samples have been found acceptable.

1 (3) Price bids may not be opened until after the unit has completed
2 evaluation of the technical offers or samples.

3 (4) (i) A price bid may not be opened at any time if the bid is submitted
4 by a bidder whose technical offer or sample has been evaluated as unacceptable to the unit.

5 (ii) A procurement officer shall return an unopened price bid
6 submitted by a bidder whose technical offer or sample has been evaluated as unacceptable.

7 (c) (1) A unit shall give public notice of an invitation for bids before bid
8 opening in accordance with this subsection.

9 (2) A unit shall give reasonable notice that shall be at least 10 days before
10 bid opening.

11 (3) [Until July 1, 2006, the] **THE** unit shall publish notice in [the Contract
12 Weekly, Contract Weekly Online, and] eMaryland Marketplace at least 20 days before bid
13 opening if:

14 (i) the procurement officer reasonably expects bid prices to exceed
15 **[\$25,000] \$50,000** or a lower amount set by the Board by regulation in accordance with
16 Title 10, Subtitle 1 of the State Government Article; and

17 (ii) at least part of the procurement contract is to be performed in
18 this State or the District of Columbia.

19 [(4) On and after July 1, 2006, the unit shall publish the notice required
20 under paragraph (3) of this subsection in eMaryland Marketplace.]

21 **[(5)] (4)** In addition to any notice required under this subsection, a unit
22 may publish notice of an invitation for bids:

23 (i) on a bid board or eMaryland Marketplace; or

24 (ii) in a newspaper, periodical, or trade journal.

25 (d) (1) A procurement officer shall:

26 (i) open bids in public at the time and place designated in the
27 invitation for bids; and

28 (ii) announce, record, and post:

29 1. the name of each bidder; and

30 2. the amount of each bid.

1 (2) Except as provided in paragraph (3) of this subsection, a bid is
2 irrevocable, after bid opening, for the period specified in the invitation for bids.

3 (3) A procurement officer may allow a bidder to correct or withdraw a bid
4 if correction or withdrawal is:

5 (i) allowed under regulations adopted under this Division II; and

6 (ii) approved in writing by the Office of the Attorney General.

7 (e) (1) After obtaining any approval required by law, the procurement officer
8 shall award the procurement contract to the responsible bidder who submits the responsive
9 bid that:

10 (i) is the lowest bid price;

11 (ii) if the invitation for bids so provides, is the lowest evaluated bid
12 price; or

13 (iii) for procurement subject to § 11–202(3) of this article, is the bid
14 most favorable to the State.

15 (2) If, after competitive sealed bids have been opened, a procurement
16 officer determines that only 1 responsible bidder has submitted a responsive bid, the unit
17 may negotiate the procurement contract with that 1 bidder under the procedure for sole
18 source procurement.

19 (3) (i) After competitive sealed bids have been opened, a procurement
20 officer may award a procurement contract on the basis of revised bids if:

21 1. all bids are rejected under § 13–206(b) of this title;

22 2. all bid prices exceed the funds available for the
23 procurement; or

24 3. with the approval of the head of the unit or a designee, the
25 procurement officer determines that all bids are unreasonable as to at least 1 requirement
26 and the delay that would result from issuing a new invitation for bids with revised
27 specifications or quantities would be fiscally disadvantageous or otherwise not in the best
28 interests of the State.

29 (ii) If there is more than 1 bidder, discussions about revised
30 specifications or quantities shall be conducted with all responsible bidders who submitted
31 responsive bids. The bidders shall be treated fairly and equally with respect to any
32 discussions.

1 (iii) As promptly as possible, the procurement officer shall:

2 1. issue an invitation for revised bids, which shall state
3 whether the award will be made without competitive negotiations; and

4 2. require a prompt response to that invitation.

5 (iv) An invitation for revised bids is not subject to the notice
6 requirements in subsection (c) of this section.

7 (v) After revised bids have been submitted, negotiations with
8 bidders may not be conducted unless the procurement officer determines that there is a
9 compelling reason to negotiate.

10 (vi) After revised bids have been opened and any approval required
11 by law has been obtained, the procurement officer shall award the procurement contract to
12 the responsible bidder who submits a responsive bid that:

13 1. is the lowest bid price;

14 2. if the invitation for revised bids so provides, is the lowest
15 evaluated bid price; or

16 3. for procurement subject to § 11–202(3) of this article, is the
17 bid most favorable to the State.

18 (4) A responsible bid or proposal shall include the criteria specified in
19 subsection (a) of this section.

20 (f) Not more than 30 days after the execution and approval of a procurement
21 contract in excess of ~~[\$25,000]~~ **\$50,000** awarded under this section, or a lower amount set
22 by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government
23 Article, a unit shall publish notice of the award[:

24 (1) until July 1, 2006, in the Contract Weekly and eMaryland Marketplace;
25 and

26 (2) on and after July 1, 2006,] in eMaryland Marketplace.

27 13–104.

28 (a) Competitive sealed proposals [may be used if:

29 (1) the procurement is for human, social, cultural, or educational services;

1 (2) with the approval of the head of a unit, the procurement officer
2 determines that specifications cannot be prepared that allow an award based on the lowest
3 bid price, the lowest evaluated bid price or, if the procurement is subject to § 11-202(3) of
4 this article, the bid most favorable to the State; or

5 (3) the head of the unit determines that:

6 (i) the need to use a method other than competitive sealed bids is
7 sufficiently compelling to override the general public policy that favors awarding
8 procurement contracts on the basis of competitive sealed bids; and

9 (ii) the use of competitive sealed bidding for that procurement
10 contract is not practicable or not advantageous to the State] **IS THE PREFERRED METHOD**
11 **FOR HUMAN, SOCIAL, CULTURAL, OR EDUCATIONAL SERVICES.**

12 (b) (1) Whenever procurement is based on competitive sealed proposals, a
13 procurement officer shall seek proposals by issuing a request for proposals.

14 (2) A request for proposals shall include a statement of:

15 (i) the scope of the procurement contract, including the expected
16 degree of minority business enterprise participation, as provided in § 14-303(b) of this
17 article;

18 (ii) the factors, including price, that will be used in evaluating
19 proposals; and

20 (iii) the relative importance of each factor.

21 (c) A unit shall publish a request for proposals in the same manner as required
22 for an invitation for bids.

23 (d) (1) After receipt of proposals but before the procurement officer awards the
24 procurement contract, a unit may conduct discussions with an offeror to:

25 (i) obtain the best price for the State; and

26 (ii) ensure full understanding of:

27 1. the requirements of the State, as set forth in the request
28 for proposals; and

29 2. the proposal submitted by the offeror.

30 (2) If discussions are conducted, the unit:

1 (i) shall conduct the discussions in accordance with regulations
2 adopted under this Division II;

3 (ii) shall provide an opportunity to participate to each responsible
4 offeror who submits a proposal that, in the judgment of the procurement officer, is
5 reasonably susceptible of being selected for award;

6 (iii) shall treat all of those responsible offerors fairly and equally;

7 (iv) may allow all of those responsible offerors to revise their initial
8 proposals by submitting best and final offers, if discussions indicate that it would be in the
9 best interests of the State to do so;

10 (v) may conduct more than 1 series of discussions and requests for
11 best and final offers; and

12 (vi) may not disclose to an offeror any information derived from a
13 proposal or discussions with a competing offeror.

14 (e) (1) Except as provided in paragraph (2) of this subsection:

15 (i) a proposal is irrevocable for the period specified in the request
16 for proposals; and

17 (ii) a best and final offer is irrevocable for the period specified in the
18 request for best and final offers.

19 (2) A procurement officer may allow an offeror to correct or withdraw a
20 proposal or best and final offer if correction or withdrawal is:

21 (i) allowed under regulations adopted under this Division II; and

22 (ii) approved in writing by the Office of the Attorney General.

23 (f) After obtaining any approval required by law, the procurement officer shall
24 award the procurement contract to the responsible offeror who submits the proposal or best
25 and final offer determined to be the most advantageous to the State considering the
26 evaluation factors set forth in the request for proposals.

27 (g) A unit shall publish notice of a contract in excess of **[\$25,000] \$50,000**
28 awarded under this section, or a lower amount set by the Board by regulation in accordance
29 with Title 10, Subtitle 1 of the State Government Article [as follows:

30 (1) until July 1, 2006, in the Contract Weekly and in eMaryland
31 Marketplace; and

1 (2) on and after July 1, 2006,] in eMaryland Marketplace.

2 13-109.

3 (a) In this section, “small procurement” means a procurement for which:

4 (1) a unit spends [~~\$25,000~~] **\$50,000** or less;

5 (2) a contractor provides services subject to § 11-202(3) of this article for
6 expected annual revenues of [~~\$25,000~~] **\$50,000** or less; or

7 (3) the Department of General Services **OR THE DEPARTMENT OF**
8 **TRANSPORTATION** is seeking to award a procurement contract for a construction with a
9 value that is [~~\$50,000~~] **\$100,000** or less.

10 (b) A unit may make small procurements in accordance with the regulations of
11 primary procurement units.

12 (c) A primary procurement unit may not create a small procurement by artificial
13 division of a procurement.

14 (d) Any regulation of a primary procurement unit to govern small procurements:

15 (1) shall provide for a simplified administrative procedure;

16 (2) shall be consistent with the basic intent of this Division II; and

17 (3) may not be disadvantageous economically to the State.

18 (e) At least every 3 years, the Board shall:

19 (1) review the prevailing costs of labor and materials; and

20 (2) if warranted by changes in cost, recommend to the General Assembly
21 appropriate adjustments in the ceiling for a small procurement.

22 **13-112.**

23 **(A) IN THIS SECTION, “DEPARTMENT” MEANS THE DEPARTMENT OF**
24 **GENERAL SERVICES OR THE DEPARTMENT OF TRANSPORTATION.**

25 **(B) QUALIFICATION BASED SELECTION SHALL ONLY BE USED BY THE**
26 **DEPARTMENT IF THE PROCUREMENT:**

27 **(1) IS FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES;**

1 **(2) IS MADE ON A COMPETITIVE BASIS;**

2 **(3) INCLUDES AN EVALUATION OF THE TECHNICAL PROPOSALS AND**
3 **QUALIFICATIONS OF AT LEAST TWO PERSONS; AND**

4 **(4) THE SERVICES CANNOT BE PROVIDED FEASIBLY AND**
5 **ECONOMICALLY BY EXISTING IN-HOUSE RESOURCES.**

6 **(C) (1) WHENEVER A PROCUREMENT IS BASED ON QUALIFICATION**
7 **BASED SELECTION, A PROCUREMENT OFFICER SHALL SEEK PROPOSALS BY ISSUING**
8 **A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.**

9 **(2) A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING**
10 **SERVICES SHALL INCLUDE A STATEMENT:**

11 **(I) DESCRIBING GENERALLY THE ARCHITECTURAL SERVICES**
12 **OR ENGINEERING SERVICES THAT ARE THE SUBJECT OF THE PROCUREMENT; AND**

13 **(II) INDICATING HOW AN INTERESTED PERSON MAY RECEIVE**
14 **INFORMATION ABOUT THE PROCUREMENT, INCLUDING A COMPREHENSIVE**
15 **DESCRIPTION OF THE NATURE AND SCOPE OF THE ARCHITECTURAL SERVICES OR**
16 **ENGINEERING SERVICES.**

17 **(D) THE DEPARTMENT SHALL PUBLISH REASONABLE AND TIMELY NOTICE**
18 **OF A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES IN**
19 **EMARYLAND MARKETPLACE.**

20 **(E) THE DEPARTMENT SHALL:**

21 **(1) EVALUATE THE TECHNICAL PROPOSALS AND QUALIFICATIONS OF**
22 **THE PERSONS SUBMITTING THE PROPOSALS; AND**

23 **(2) DETERMINE AN ORDER OF PRIORITY BASED ON THOSE**
24 **EVALUATIONS.**

25 **(F) (1) FROM THE RESULTS OF THE SELECTION PROCESS UNDER THIS**
26 **SECTION, THE DEPARTMENT SHALL:**

27 **(I) BEGIN NEGOTIATIONS WITH THE MOST QUALIFIED**
28 **PERSONS; AND**

29 **(II) TRY TO NEGOTIATE A PROCUREMENT CONTRACT WITH**
30 **THAT PERSON AT A RATE OF COMPENSATION THAT IS FAIR, COMPETITIVE, AND**
31 **REASONABLE.**

1 **(2) IN DETERMINING THE RATE OF COMPENSATION UNDER THIS**
2 **SUBSECTION, THE DEPARTMENT SHALL:**

3 **(I) CONSIDER THE SCOPE AND COMPLEXITY OF THE**
4 **ARCHITECTURAL SERVICES OR ENGINEERING SERVICES REQUIRED; AND**

5 **(II) CONDUCT A DETAILED ANALYSIS OF THE COST OF THOSE**
6 **SERVICES.**

7 **(3) (I) IN DETERMINING THE RATE OF COMPENSATION UNDER**
8 **THIS SUBSECTION, THE DEPARTMENT OF TRANSPORTATION ALSO SHALL COMPLY**
9 **WITH LIMITS ON COSTS REIMBURSEMENT, INCLUDING OVERHEAD LIMITS**
10 **ESTABLISHED BY THE DEPARTMENT.**

11 **(II) IN SETTING THE LIMITS UNDER SUBPARAGRAPH (I) OF THIS**
12 **PARAGRAPH, THE DEPARTMENT OF TRANSPORTATION SHALL CONSIDER THE GOAL**
13 **OF THE SELECTION PROCESS AS WELL AS THE REASONABLE COST OF**
14 **ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.**

15 **(G) IF THE DEPARTMENT IS UNABLE TO NEGOTIATE A SATISFACTORY**
16 **PROCUREMENT CONTRACT AT A RATE OF COMPENSATION THAT IS FAIR,**
17 **COMPETITIVE, AND REASONABLE, IT SHALL:**

18 **(1) TERMINATE NEGOTIATIONS WITH THE MOST QUALIFIED PERSON;**
19 **AND**

20 **(2) NEGOTIATE IN THE SAME MANNER WITH THE NEXT MOST**
21 **QUALIFIED PERSON AND, IF NECESSARY, CONTINUE NEGOTIATIONS IN**
22 **ACCORDANCE WITH THE PROCEDURES UNDER THIS SECTION UNTIL THE AGENCY**
23 **REACHES AN AGREEMENT.**

24 **(H) AFTER OBTAINING ANY APPROVAL REQUIRED BY LAW, THE**
25 **PROCUREMENT OFFICER SHALL AWARD A PROCUREMENT CONTRACT TO THE MOST**
26 **QUALIFIED PERSON WITH WHOM AN AGREEMENT WAS REACHED ON COMPENSATION**
27 **THAT IS FAIR, COMPETITIVE, AND REASONABLE.**

28 **(I) NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A**
29 **PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, THE DEPARTMENT**
30 **SHALL PUBLISH IN eMARYLAND MARKETPLACE NOTICE OF THE AWARD.**

31 **(J) ALL DOCUMENTS RELATING TO THE AWARD OF A PROCUREMENT**
32 **CONTRACT ARE TO BE MADE AVAILABLE TO THE PUBLIC, INCLUDING:**

- 1 **(1) TECHNICAL RESUMES;**
- 2 **(2) TECHNICAL PROPOSALS;**
- 3 **(3) THE PROCUREMENT CONTRACT;**
- 4 **(4) SCOPE OF SERVICES;**
- 5 **(5) PROGRAMS/PROJECTS;**
- 6 **(6) STAFF REPORTS;**
- 7 **(7) INTERNAL WORKSHEETS; AND**
- 8 **(8) ALL OTHER INFORMATION RELATING TO THE NEGOTIATION AND**
9 **AWARD OF A PROCUREMENT CONTRACT UNDER THIS SECTION.**

10 **(K) (1) THE DEPARTMENT SHALL WAIVE THE REQUIREMENTS IN**
11 **SUBSECTIONS (B), (E), (F), (G), AND (J) OF THIS SECTION IF:**

12 **(I) THE DEPARTMENT DETERMINES THAT:**

13 **1. THE ARCHITECTURAL SERVICES OR ENGINEERING**
14 **SERVICES CANNOT BE DEFINED SO COMPLETELY AS TO CARRY OUT THOSE**
15 **REQUIREMENTS; OR**

16 **2. THE SPECIFICATIONS REQUIRE ARCHITECTURAL**
17 **SERVICES OR ENGINEERING SERVICES THAT ARE AVAILABLE ONLY FROM A BONA**
18 **FIDE SINGLE SOURCE OR A PROPRIETARY PRODUCT OR PROCESS;**

19 **(II) THE GOVERNOR DECLARES AN EMERGENCY;**

20 **(III) AFTER A NATURAL DISASTER, PUBLIC HEALTH AND SAFETY**
21 **ARE ENDANGERED; OR**

22 **(IV) ON THE RECOMMENDATION OF THE SECRETARY OF THE**
23 **DEPARTMENT AND A FINDING BY THE GOVERNOR THAT EXTRAORDINARY**
24 **CIRCUMSTANCES EXIST, THE BOARD OF PUBLIC WORKS DETERMINES THAT:**

25 **1. FOR A PARTICULAR PROJECT, URGENT**
26 **CIRCUMSTANCES REQUIRE THE SELECTION OF A CONTRACTOR ON AN EXPEDITED**
27 **BASIS;**

1 **2. EXPEDITED SELECTION BEST SERVES THE PUBLIC**
2 **INTEREST; AND**

3 **3. THE NEED FOR AN EXPEDITED SELECTION**
4 **OUTWEIGHS THE BENEFITS OF CARRYING OUT THOSE REQUIREMENTS.**

5 **(2) A WAIVER AND THE REASONS FOR IT SHALL BE DOCUMENTED**
6 **AND:**

7 **(I) IMMEDIATELY REPORTED TO eMARYLAND MARKETPLACE**
8 **FOR PUBLICATION; AND**

9 **(II) REPORTED TO THE LEGISLATIVE POLICY COMMITTEE**
10 **WITHIN 30 DAYS AFTER THE WAIVER OCCURS.**

11 **(L) (1) THE DEPARTMENT MAY NOT AWARD A PROCUREMENT CONTRACT**
12 **TO A PERSON UNDER THIS SUBTITLE UNLESS:**

13 **(I) THE PERSON SUBMITS:**

14 **1. AN AFFIDAVIT OF NONCOLLUSION; AND**

15 **2. A PRICE QUOTATION; AND**

16 **(II) FOR A PROCUREMENT CONTRACT COSTING MORE THAN**
17 **\$200,000, THE PERSON HAS EXECUTED A TRUTH-IN-NEGOTIATION CERTIFICATE.**

18 **(2) THE TRUTH-IN-NEGOTIATION CERTIFICATE SHALL STATE THAT:**

19 **(I) WAGE RATES AND OTHER FACTUAL UNIT COSTS**
20 **SUPPORTING WAGES ARE ACCURATE, COMPLETE, AND CURRENT AS OF THE TIME OF**
21 **CONTRACTING; AND**

22 **(II) THE ORIGINAL PRICE OF THE PROCUREMENT CONTRACT**
23 **AND ANY ADDITIONS TO THE PROCUREMENT CONTRACT WILL BE ADJUSTED TO**
24 **EXCLUDE ANY SIGNIFICANT PRICE INCREASE IF THE DEPARTMENT DETERMINES**
25 **THAT THE PRICE INCREASE IS DUE TO WAGE RATES OR OTHER FACTUAL UNIT COSTS**
26 **THAT WERE INACCURATE, INCOMPLETE, OR NOT CURRENT AS OF THE TIME OF**
27 **CONTRACTING.**

28 **(3) AN ADJUSTMENT TO THE PROCUREMENT CONTRACT SHALL BE**
29 **MADE WITHIN 1 YEAR AFTER THE PROCUREMENT CONTRACT IS COMPLETED.**

1 **(M) THE DEPARTMENT MAY NOT AWARD A PROCUREMENT CONTRACT FOR**
2 **ARCHITECTURAL SERVICES OR ENGINEERING SERVICES THAT:**

3 **(1) IS A COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT; OR**

4 **(2) INCLUDES FEE SCHEDULES THAT ARE BASED ON A PERCENTAGE**
5 **OF CONSTRUCTION COSTS.**

6 **(N) (1) THE STATE MAY POSTAUDIT THE RATES OF CONTRACTORS**
7 **PERFORMING ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.**

8 **(2) ALL RATES USED IN A COST-PLUS-FIXED-FEE PROCUREMENT**
9 **CONTRACT SHALL BE VERIFIED BY POSTAUDIT IF:**

10 **(I) THE COMPENSATION IS MORE THAN \$50,000 AND THE**
11 **PROCUREMENT CONTRACT INVOLVES A UNIT OTHER THAN A TRANSPORTATION**
12 **UNIT; AND**

13 **(II) THE COMPENSATION IS MORE THAN \$25,000 AND THE**
14 **PROCUREMENT CONTRACT INVOLVES A TRANSPORTATION UNIT.**

15 **(3) ON REQUEST BY A PROCURING AUTHORITY OF ANY POLITICAL**
16 **SUBDIVISION OF THE STATE THAT IS CONSIDERING AN ARCHITECT OR ENGINEER**
17 **FOR A SPECIFIC PROJECT, ANY STATE AUDIT OF THE ARCHITECT OR ENGINEER**
18 **SHALL BE MADE AVAILABLE.**

19 **(O) (1) THE DEPARTMENT MAY TERMINATE WITHOUT LIABILITY A**
20 **PROCUREMENT CONTRACT FOR ARCHITECTURAL SERVICES OR ENGINEERING**
21 **SERVICES IF:**

22 **(I) THERE HAS BEEN A CONVICTION OF A CRIME ARISING OUT**
23 **OF OR IN CONNECTION WITH THE PROCUREMENT CONTRACT OR ANY PAYMENT TO**
24 **BE MADE UNDER THE PROCUREMENT CONTRACT; OR**

25 **(II) THERE HAS BEEN A BREACH OR VIOLATION OF ANY**
26 **PROVISION OF THIS SUBTITLE.**

27 **(2) SUBJECT TO SUBSECTION (A) OF THIS SECTION, THE**
28 **DEPARTMENT MAY DEDUCT FROM THE PROCUREMENT CONTRACT PRICE OR**
29 **OTHERWISE RECOVER THE FULL AMOUNT OF ANY FEE, COMMISSION, GIFT,**
30 **PERCENTAGE, OR OTHER CONSIDERATION PAID IN VIOLATION OF THIS SUBTITLE.**

31 **(3) IF A PROCUREMENT CONTRACT IS TERMINATED UNDER THIS**
32 **SECTION, THE CONTRACTOR:**

1 (I) IS ENTITLED ONLY TO THE EARNED VALUE OF THE WORK
2 COMPLETED AS OF THE DATE OF TERMINATION, PLUS TERMINATION COSTS;

3 (II) IS LIABLE FOR ANY COSTS INCURRED FOR COMPLETION OF
4 THE WORK OVER THE MAXIMUM AMOUNT PAYABLE TO THE CONTRACTOR UNDER
5 THE PROCUREMENT CONTRACT; AND

6 (III) SHALL REFUND ALL PROFITS OR FIXED FEES REALIZED
7 UNDER THE PROCUREMENT CONTRACT.

8 (4) (I) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO
9 ANY OTHER RIGHT OR REMEDY ALLOWED BY LAW.

10 (II) BY CARRYING OUT THIS SECTION, THE DEPARTMENT DOES
11 NOT WAIVE ANY OTHER RIGHT OR REMEDY PROVIDED BY LAW.

12 (P) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY
13 OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$20,000
14 OR IMPRISONMENT NOT EXCEEDING 10 YEARS OR BOTH.

15 (Q) (1) THE DEPARTMENT OF GENERAL SERVICES AND THE
16 DEPARTMENT OF TRANSPORTATION SHALL ADOPT REGULATIONS THAT PROVIDE
17 SUBSTANTIALLY SIMILAR PROCEDURES TO CARRY OUT THIS SECTION.

18 (2) THE PROCEDURES OF THE DEPARTMENT SHALL ENSURE THAT A
19 RECOMMENDATION TO THE BOARD OF PUBLIC WORKS FOR THE AWARD OF A
20 PROCUREMENT CONTRACT FOR ARCHITECTURAL SERVICES OR ENGINEERING
21 SERVICES COSTING OVER \$200,000 IS MADE ON A COMPETITIVE BASIS AND
22 INCLUDES AN EVALUATION OF THE TECHNICAL PROPOSALS AND QUALIFICATIONS
23 OF AT LEAST TWO PERSONS.

24 [13-402.] 13-113.

25 (a) The [Secretary] DESIGNATED PROCUREMENT UNITS ~~shall~~ MAY adopt
26 MASTER CONTRACTING, a streamlined procurement [process for procurement of
27 information technology services that provides] METHOD, TO PROVIDE for the qualification
28 of an offeror in one or more categories of [information technology] services, SUPPLIES, OR
29 COMMODITIES.

30 (b) ~~The [streamlined procurement process] MASTER CONTRACTING~~
31 ~~PROCUREMENT METHOD adopted by [the Secretary] EACH DESIGNATED~~
32 ~~PROCUREMENT UNIT shall include:~~

1 **(B) IF A DESIGNATED PROCUREMENT UNIT ADOPTS MASTER CONTRACTING,**
 2 **THE MASTER CONTRACTING METHOD SHALL INCLUDE:**

3 (1) the categories of [information technology] services, **SUPPLIES, OR**
 4 **COMMODITIES** in which an offeror may submit a proposal for qualification;

5 (2) a procedure for the consideration and approval of proposals for
 6 qualification of [an unlimited number of] **MULTIPLE** offerors in each category of
 7 [information technology] services, **SUPPLIES, OR COMMODITIES**;

8 (3) the execution of a standard contract for a specified period of time
 9 between the State and an offeror approved [for qualification in a category of information
 10 technology services] **AS A MASTER CONTRACTOR; AND**

11 (4) [the policies and procedures to be followed by a unit of the Executive
 12 Branch in the issuance of a solicitation for a task order for information technology services
 13 to a qualified offeror that has executed a contract with the Secretary; and

14 (5) a performance evaluation procedure to be used by a unit of the
 15 Executive Branch to evaluate the performance of a qualified offeror that has completed
 16 work on a task order.

17 (c) (1) A unit of the Executive Branch that requires [information technology]
 18 services, **SUPPLIES, OR COMMODITIES COVERED UNDER A MASTER CONTRACT** may
 19 issue a solicitation for a task order to a [qualified offeror in the appropriate category of
 20 information technology services] **MASTER CONTRACTOR** consistent with [procedures and
 21 policies] **THE REGULATIONS** adopted [by the Secretary in subsection (b) of this section]
 22 **UNDER § 13–114 OF THIS SUBTITLE.**

23 (2) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**
 24 **THE** solicitation for a task order shall include a statement of the:

25 (i) factors that will be used in evaluating a [qualified offeror's]
 26 **MASTER CONTRACTOR'S response; and**

27 (ii) relative importance of each factor.

28 (d) (1) ~~IF~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, IF**
 29 the unit of the Executive Branch expects that the total cost of the [information technology]
 30 services, **SUPPLIES, OR COMMODITIES** will exceed \$100,000, the unit shall issue a
 31 solicitation for a task order to all [qualified offerors] **MASTER CONTRACTORS** in the
 32 appropriate category established by the [Secretary] **DESIGNATED PROCUREMENT UNIT.**

33 (2) If the unit of the Executive Branch expects that the total cost of the
 34 [information technology services] **SERVICES, SUPPLIES, OR COMMODITIES** will be

1 \$100,000 or less, the unit shall issue a solicitation for a task order to a minimum of six
 2 qualified [offerors] **MASTER CONTRACTORS** or all [qualified offerors] **MASTER**
 3 **CONTRACTORS**, whichever is less, in the appropriate category established by the
 4 [Secretary] **DESIGNATED PROCUREMENT UNIT**.

5 (e) ~~After~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, AFTER**
 6 a unit of the Executive Branch receives responses from [qualified offerors] **MASTER**
 7 **CONTRACTORS** to a solicitation for a task order, the unit shall evaluate the responses and
 8 may select [an offeror] **A MASTER CONTRACTOR** based on the response that is determined
 9 to be the most advantageous to the State considering the evaluation factors set forth in the
 10 task order.

11 **(F) THE REQUIREMENTS OF SUBSECTIONS (C)(2), (D), AND (E) OF THIS**
 12 **SECTION DO NOT APPLY TO A MASTER CONTRACT FOR CONSTRUCTION IF THE**
 13 **MASTER CONTRACT:**

14 **(1) IS AWARDED THROUGH A COMPETITIVE PROCESS IN ACCORDANCE**
 15 **WITH THIS SUBTITLE; AND**

16 **(2) STATES:**

17 **(I) HOW TASK ORDERS WILL BE AWARDED ~~AND~~; AND**

18 **(II) THE MAXIMUM NUMBER OF QUALIFIED CONTRACTORS THAT**
 19 **WILL BE AWARDED A MASTER CONTRACT FOR CONSTRUCTION.**

20 13-114.

21 **(A) THE BOARD SHALL ADOPT REGULATIONS IN ACCORDANCE WITH TITLE**
 22 **10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE TO ESTABLISH A UNIFORM**
 23 **PROCESS FOR THE SOLICITATION OF MASTER CONTRACTS AND TASK ORDERS.**

24 **(B) EACH DESIGNATED PROCUREMENT UNIT SHALL ENSURE COMPLIANCE**
 25 **WITH THE REGULATIONS SET FORTH IN SUBSECTION (A) OF THIS SECTION.**

26 [Subtitle 3. Architectural and Engineering Services.]

27 [13-301.

28 (a) In this subtitle the following words have the meanings indicated.

29 (b) "General Selection Board" means the General Professional Services Selection
 30 Board.

31 (c) "Person" includes, unless the context requires otherwise:

1 (1) the State;

2 (2) a county, municipal corporation, or other political subdivision; and

3 (3) any unit of the State government or a political subdivision.

4 (d) "Selection Board" means the General Selection Board or the Transportation
5 Selection Board.

6 (e) "Transportation Selection Board" means the Transportation Professional
7 Services Selection Board.

8 (f) "Transportation unit" means:

9 (1) the Department of Transportation;

10 (2) any unit in the Department of Transportation;

11 (3) the Maryland Port Commission; or

12 (4) the Maryland Transportation Authority.]

13 [13-302.

14 (a) There is a General Professional Services Selection Board in the Department
15 of General Services.

16 (b) (1) The General Selection Board consists of:

17 (i) 4 permanent members; and

18 (ii) 1 temporary member.

19 (2) The permanent members shall be:

20 (i) the Secretary of General Services, ex officio, or a designee; and

21 (ii) 3 members who are appointed by the Governor and shall be:

22 1. 1 appointee from the Department of General Services on
23 recommendation of the Secretary of General Services; and

24 2. 2 appointees from the general public, at least 1 of whom is
25 not an architect or engineer.

1 (3) The temporary member shall be the head of the unit whose request is
2 under consideration.

3 (4) On recommendation of the Secretary of General Services, the Governor
4 may appoint an alternate member to serve in the absence of the appointee under paragraph
5 (2)(i)1 of this subsection.

6 (c) (1) The appointee from the Department of General Services serves at the
7 pleasure of the Governor.

8 (2) An appointee from the general public:

9 (i) serves a term of 5 years; and

10 (ii) at the end of the term, continues to serve until a successor is
11 appointed and qualifies.

12 (3) A temporary member serves only for the purpose of considering and
13 acting on the request of the unit that the temporary member represents.

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

16 (d) (1) The Governor may remove a member for incompetence, misconduct,
17 neglect of duty, or other sufficient cause.

18 (2) A member may not participate in any matter before the General
19 Selection Board in which the member:

20 (i) has an interest; or

21 (ii) is or, within the previous 12 months, has been associated with:

22 1. a transportation unit that has an interest in the matter;

23 or

24 2. any other person who is not a unit and has an interest in
25 the matter.

26 (e) Each appointee from the general public is entitled to:

27 (1) compensation in accordance with the State budget; and

28 (2) reimbursement for expenses under the Standard State Travel
29 Regulations, as provided in the State budget.]

30 [13-303.

1 (a) There is a Transportation Professional Services Selection Board in the
2 Department of Transportation.

3 (b) (1) The Transportation Selection Board consists of:

4 (i) 4 individuals who are permanent members; and

5 (ii) 1 individual who is a temporary member.

6 (2) The permanent membership shall consist of the following:

7 (i) the Secretary of Transportation, ex officio, or a designee;

8 (ii) 1 individual from the Department of Transportation, appointed
9 by the Governor on recommendation of the Secretary of Transportation; and

10 (iii) 2 individuals appointed by the Governor from the general public,
11 at least 1 of whom is not an architect or engineer.

12 (3) The transportation unit whose request the Transportation Selection
13 Board is considering shall appoint the temporary member.

14 (4) On recommendation of the Secretary of Transportation, the Governor
15 may appoint an alternate member to serve in the absence of the appointee under paragraph
16 (2)(ii) of this subsection.

17 (c) (1) The appointee from the Department of Transportation serves at the
18 pleasure of the Governor.

19 (2) An appointee from the general public:

20 (i) serves a term of 5 years; and

21 (ii) at the end of the term, continues to serve until a successor is
22 appointed and qualifies.

23 (3) A temporary member serves only for the purpose of considering and
24 acting on the request of the transportation unit that the temporary member represents.

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

27 (d) (1) The Governor may remove a member for incompetence, misconduct,
28 neglect of duty, or other sufficient cause.

1 (2) A member may not participate in any matter before the Transportation
2 Selection Board in which the member:

3 (i) has an interest; or

4 (ii) is or, within the previous 12 months, has been associated with a
5 person, other than a transportation unit, who has an interest in the matter.

6 (e) Each appointee from the general public is entitled to:

7 (1) compensation in accordance with the State budget; and

8 (2) reimbursement for expenses under the Standard State Travel
9 Regulations, as provided in the State budget.]

10 [13-304.

11 (a) The selection boards shall adopt regulations that provide substantially similar
12 procedures to carry out this subtitle.

13 (b) The procedures of each selection board shall ensure that a recommendation to
14 the Board of Public Works for the award of a procurement contract for architectural or
15 engineering services costing over \$200,000 is made on a competitive basis and includes an
16 evaluation of the technical proposals and qualifications of at least 2 persons.]

17 [13-305.

18 (a) At the request of a school board or a political subdivision of the State, the
19 Selection Board may provide advisory services about procurement of architectural services
20 or engineering services.

21 (b) A school board or political subdivision that receives advisory services under
22 this section shall reimburse the Selection Board for its costs.]

23 [13-306.

24 (a) Except for a transportation unit, a unit that intends to procure architectural
25 or engineering services costing more than \$200,000 shall submit a request to the General
26 Selection Board at a public meeting of that Board.

27 (b) The General Selection Board shall publish reasonable and timely notice of a
28 request presented under this section.]

29 [13-307.

1 (a) The General Selection Board may approve a request for architectural or
2 engineering services only if it concludes that the services cannot be provided feasibly and
3 economically by existing in-house resources.

4 (b) The General Selection Board shall:

5 (1) publish uniform and consistent announcements of all approvals for
6 requests for architectural services or engineering services; and

7 (2) mail a copy of an announcement to each person who requests notice.

8 (c) An announcement of an approval under this section shall:

9 (1) describe generally the architectural services or engineering services
10 that are the subject of the procurement; and

11 (2) indicate how an interested person may receive information about the
12 procurement.

13 (d) (1) On request, the General Selection Board shall provide to an interested
14 person a comprehensive description of the nature and scope of the architectural or
15 engineering services that are the subject of the procurement.

16 (2) The unit requesting the procurement shall prepare the description
17 required under this subsection.]

18 [13-308.

19 (a) The General Selection Board shall:

20 (1) evaluate technical proposals and the qualifications of the persons
21 submitting proposals; and

22 (2) determine an order of priority based on those evaluations.

23 (b) (1) The General Selection Board shall:

24 (i) begin negotiations with the most qualified person; and

25 (ii) try to negotiate a procurement contract with that person at a rate
26 of compensation that is fair, competitive, and reasonable.

27 (2) In determining the rate of compensation under this subsection, the
28 General Selection Board shall:

29 (i) consider the scope and complexity of the architectural or
30 engineering services required; and

1 (ii) conduct a detailed analysis of the cost of those services.

2 (c) (1) If the General Selection Board is unable to negotiate a satisfactory
3 procurement contract at a rate of compensation that is fair, competitive, and reasonable, it
4 shall:

5 (i) terminate negotiations with the most qualified person; and

6 (ii) negotiate in the same manner with the second and, if necessary,
7 the third most qualified person chosen under subsection (a) of this section.

8 (2) If the General Selection Board is unable to negotiate a procurement
9 contract with any person chosen under subsection (a) of this section, the General Selection
10 Board shall:

11 (i) choose additional persons in order of their competence and
12 qualification; and

13 (ii) continue negotiations in accordance with the procedures under
14 this section until it reaches an agreement.

15 (d) The General Selection Board may delegate the negotiation process to the
16 Department of General Services, but any negotiating team shall include a representative
17 of the unit requesting the procurement.]

18 [13-309.

19 The General Selection Board shall:

20 (1) review all procurement contract documents; and

21 (2) announce the general content of the documents at a public meeting of
22 that Board.]

23 [13-310.

24 (a) (1) A transportation unit that intends to procure architectural or
25 engineering services shall submit a request to the Secretary of Transportation.

26 (2) The Secretary of Transportation shall certify to the Transportation
27 Selection Board that the architectural or engineering services requested under this section
28 cannot be provided feasibly and economically by existing in-house resources.

29 (b) The Transportation Selection Board shall:

1 (1) publish uniform and consistent announcements of all requests for
2 architectural services or engineering services; and

3 (2) mail a copy of an announcement to each person who requests notice of
4 a specific project.

5 (c) An announcement of a request under this section shall:

6 (1) describe generally the architectural or engineering services that are the
7 subject of the procurement; and

8 (2) indicate how an interested person may receive information about the
9 procurement.

10 (d) A transportation unit shall negotiate competitively each procurement contract
11 for architectural or engineering services costing \$200,000 or less at a price that the
12 transportation unit determines to be fair and reasonable.]

13 [13–311.

14 (a) The Department of Transportation shall establish a selection process based
15 on a competitive procedure to:

16 (1) promote engineering and design quality and ensure maximum
17 competition by professional companies of all sizes providing architectural or engineering
18 services;

19 (2) evaluate technical proposals and the qualifications of the persons
20 submitting proposals; and

21 (3) determine an order of priority based on those evaluations.

22 (b) (1) From the results of the selection process under subsection (a) of this
23 section, the transportation unit shall:

24 (i) begin negotiations with the most qualified person; and

25 (ii) try to negotiate a procurement contract with that person at a rate
26 of compensation that is fair, competitive, and reasonable.

27 (2) In determining the rate of compensation under this subsection, the
28 transportation unit shall:

29 (i) consider the scope and complexity of the architectural or
30 engineering services required;

31 (ii) conduct a detailed analysis of the cost of those services; and

1 (iii) comply with limits on costs reimbursement, including, but not
2 limited to overhead limits, established by the Transportation Selection Board. In setting
3 such limits, the Board shall consider the goal of the selection process set forth in paragraph
4 (1) of this subsection, as well as the reasonable cost of architectural or engineering services.

5 (c) (1) If the transportation unit is unable to negotiate a satisfactory
6 procurement contract at a rate of compensation that is fair, competitive, and reasonable, it
7 shall:

8 (i) terminate negotiations with the most qualified person; and

9 (ii) negotiate in the same manner with the second and, if necessary,
10 the third most qualified person chosen under subsection (a) of this section.

11 (2) If the transportation unit is unable to negotiate a procurement contract
12 with any person chosen under subsection (a) of this section, the transportation unit shall:

13 (i) choose additional persons in order of their competence and
14 qualification; and

15 (ii) continue negotiations in accordance with the procedures under
16 this section until it reaches an agreement.

17 (d) The Transportation Selection Board may delegate the negotiation process to
18 the Department of Transportation, but any negotiating team shall include a representative
19 of the transportation unit requesting the procurement.]

20 [13–312.

21 (a) A transportation unit shall submit to the Transportation Selection Board the
22 name of the person with whom an agreement for the procurement of architectural services
23 or engineering services is reached in accordance with § 13–311 of this subtitle.

24 (b) The Transportation Selection Board shall:

25 (1) review all procurement contract documents; and

26 (2) announce the general content of the documents at a public meeting of
27 that Board.

28 (c) (1) The Transportation Selection Board shall hold a public meeting at
29 which that Board shall:

30 (i) accept or reject the person with whom the agreement was
31 reached; or

1 (ii) for cause, postpone its decision on the selection.

2 (2) The Transportation Selection Board shall provide reasonable and
3 timely notice of a meeting required under this subsection.]

4 [13–313.

5 The Selection Board shall make available for public review all documents that relate
6 to the award of a procurement contract, including:

7 (1) technical resumes;

8 (2) proposals;

9 (3) the procurement contract;

10 (4) scope of services;

11 (5) programs;

12 (6) staff reports;

13 (7) internal worksheets; and

14 (8) all other information that relates to the negotiation and award of a
15 procurement contract under this subtitle.]

16 [13–314.

17 (a) The Selection Board shall waive the requirements of §§ 13–304(b), 13–308,
18 13–309, 13–311, 13–312(b), and 13–313 of this subtitle if:

19 (1) the Selection Board determines that:

20 (i) the architectural services or engineering services cannot be
21 defined so completely as to carry out those requirements; or

22 (ii) the specifications require architectural services or engineering
23 services that are available only from a bona fide single source or a proprietary product or
24 process;

25 (2) the Governor declares an emergency;

26 (3) after a natural disaster, public health and safety are endangered; or

1 (4) on the recommendation of the Secretary of General Services or the
2 Secretary of Transportation and a finding by the Governor that extraordinary
3 circumstances exist, the Board of Public Works determines that:

4 (i) for a particular project, urgent circumstances require the
5 selection of a contractor on an expedited basis;

6 (ii) expedited selection best serves the public interest; and

7 (iii) the need for an expedited selection outweighs the benefits of
8 carrying out those requirements.

9 (b) A waiver and the reasons for it shall be documented and:

10 (1) immediately reported to eMaryland Marketplace for publication; and

11 (2) reported to the Legislative Policy Committee within 30 days after the
12 waiver occurs.]

13 [13–315.

14 (a) (1) After choosing a contractor in accordance with this subtitle, the
15 Selection Board shall recommend that contractor to the Board of Public Works.

16 (2) With each recommendation, the Selection Board shall submit a
17 statement of the reasons for the selection.

18 (3) The statement required under this subsection serves as a public notice
19 of the selection.

20 (b) The Selection Board shall assure the Board of Public Works that the
21 recommended contractor has the financial capacity to:

22 (1) provide the architectural services or engineering services; and

23 (2) protect the State from errors and omissions that might arise from the
24 performance of the architectural or engineering services by:

25 (i) the contractor; or

26 (ii) third parties relying on the completed design or work product.]

27 [13–316.

1 (a) Within 10 days after an offeror of architectural services or engineering
2 services receives notice of a recommendation by the Selection Board to the Board of Public
3 Works, the offeror may appeal the recommendation to the Board of Public Works.

4 (b) On an appeal under this section, the Board shall:

5 (1) approve the recommendation;

6 (2) disapprove the recommendation; or

7 (3) remand the matter to the Selection Board for further consideration.

8 (c) The Board of Public Works may award a prospective offeror or an offeror the
9 reasonable costs of filing and pursuing an appeal, not including attorney's fees, if:

10 (1) the prospective offeror or offeror appeals the recommendation of the
11 Transportation Selection Board or the General Selection Board to enter into an
12 architectural services or engineering services contract to the Board of Public Works;

13 (2) the Board of Public Works disapproves the recommendation of the
14 Transportation Selection Board or the General Selection Board; and

15 (3) the Board of Public Works finds that there has been a violation of the
16 procurement law or regulations.

17 (d) The Board of Public Works shall adopt regulations to implement this section
18 and to determine what constitutes reasonable costs of filing and pursuing an appeal.]

19 [13–317.

20 (a) A unit may not award a procurement contract to a person under this subtitle
21 unless:

22 (1) the person submits:

23 (i) an affidavit of noncollusion; and

24 (ii) a price quotation; and

25 (2) for a procurement contract costing more than \$200,000, the person has
26 executed a truth-in-negotiation certificate.

27 (b) The truth-in-negotiation certificate shall state that:

28 (1) wage rates and other factual unit costs supporting wages are accurate,
29 complete, and current as of the time of contracting; and

1 (2) the original price of the procurement contract and any additions to the
2 procurement contract will be adjusted to exclude any significant price increase if the
3 Selection Board determines that the price increase is due to wage rates or other factual
4 unit costs that were inaccurate, incomplete, or not current as of the time of contracting.

5 (c) An adjustment to the procurement contract shall be made within 1 year after
6 the procurement contract is completed.]

7 [13-318.

8 The Selection Board may not award a procurement contract for architectural services
9 or engineering services that:

10 (1) is a cost-plus-a-percentage-of-cost contract; or

11 (2) includes fee schedules that are based on a percentage of construction
12 costs.]

13 [13-320.

14 (a) (1) The State may postaudit the rates of contractors performing
15 architectural services or engineering services under this subtitle as required by the
16 regulations adopted under this subtitle.

17 (2) All rates used in a cost-plus-fixed-fee procurement contract shall be
18 verified by postaudit if:

19 (i) the compensation is more than \$50,000 and the procurement
20 contract involves a unit other than a transportation unit; and

21 (ii) the compensation is more than \$25,000 and the procurement
22 contract involves a transportation unit.

23 (b) On request by a procuring authority of any political subdivision of the State
24 that is considering an architect or engineer for a specific project, any State audit of the
25 architect or engineer shall be made available.]

26 [13-321.

27 (a) The Board may terminate without liability a procurement contract for
28 architectural services or engineering services if:

29 (1) there has been a conviction of a crime arising out of or in connection
30 with the procurement contract or any payment to be made under the procurement contract;
31 or

1 (2) there has been a breach or violation of any provision of this subtitle.

2 (b) Subject to subsection (a) of this section, the Board may deduct from the
3 procurement contract price or otherwise recover the full amount of any fee, commission,
4 gift, percentage, or other consideration paid in violation of this subtitle.

5 (c) If a procurement contract is terminated under this section, the contractor:

6 (1) is entitled only to the earned value of the work completed as of the date
7 of termination, plus termination costs;

8 (2) is liable for any costs incurred for completion of the work over the
9 maximum amount payable to the contractor under the procurement contract; and

10 (3) shall refund all profits or fixed fees realized under the procurement
11 contract.

12 (d) (1) The provisions of this section are in addition to any other right or
13 remedy allowed by law.

14 (2) By carrying out this section, the Board does not waive any other right
15 or remedy provided by law.]

16 [13–322.

17 A person who violates any provision of this subtitle is guilty of a felony and on
18 conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 10 years
19 or both.]

20 [13–323.

21 This subtitle may be cited as the “Maryland Architectural and Engineering Services
22 Act”.]

23 [Subtitle 4. Streamlined Process for Procurement of Information Technology Services.]

24 [13–401.

25 (a) In this subtitle the following words have the meanings indicated.

26 (b) “Information technology” has the meaning stated in § 3A–301 of this article.

27 (c) “Secretary” means the Secretary of Information Technology.]

28 15–202.

1 [This] EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY THE BOARD,
2 THIS subtitle does not apply to a protest concerning[:

3 (1) except for a protest relating to a violation of § 13–212.1 of this article,
4 the formation of a procurement contract for architectural services or engineering services;
5 or

6 (2) except to the extent authorized by regulation by the Board,] any act or
7 omission by a procurement agency under Title 14, Subtitle 6 of this article.

8 17–103.

9 (a) (1) Before a public body awards a construction contract exceeding
10 \$100,000, the contractor shall provide payment security and performance security that
11 meet the requirements of § 17–104 of this subtitle.

12 (2) ~~The EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS~~
13 ~~SUBSECTION, THE~~ **THE** security shall be:

14 (i) for performance security, in an amount that the public body
15 considers adequate for its protection; and

16 (ii) for payment security, at least ~~50%~~ ~~100%~~ 50% of the total
17 amount payable under the contract.

18 ~~(3) BEFORE ISSUING AN INVITATION FOR BIDS FOR A CONSTRUCTION~~
19 ~~CONTRACT REQUIRING PAYMENT SECURITY, THE HEAD OF THE PUBLIC BODY MAY~~
20 ~~REDUCE THE AMOUNT OF PAYMENT SECURITY REQUIRED TO NOT LESS THAN 50%~~
21 ~~OF THE TOTAL AMOUNT PAYABLE UNDER THE CONTRACT IF A DETERMINATION IS~~
22 ~~MADE IN WRITING THAT INCLUDES:~~

23 ~~(I) A STATEMENT THAT REDUCING THE AMOUNT IS IN THE BEST~~
24 ~~INTEREST OF THE STATE; AND~~

25 ~~(II) INFORMATION ON:~~

26 ~~1. THE VALUE AND NUMBER OF SUBCONTRACTS TO BE~~
27 ~~AWARDED BY THE CONTRACTOR; AND~~

28 ~~2. THE VALUE OF THE CONTRACT.~~

29 (b) A public body, other than the State or a unit of the State government, may
30 require payment security or performance security for a construction contract if:

1 (1) the contract exceeds [~~\$25,000~~] **\$50,000** but does not exceed \$100,000;
2 and

3 (2) the amount of the security does not exceed 50% of the contract amount.

4 Article – Education

5 16–311.

6 (a) (1) Except as provided in paragraph (2) of this subsection, this section
7 applies to every contract for any building, improvement, equipment, or supplies.

8 (2) This section does not apply to:

9 (i) The purchase of books or other materials for instruction;

10 (ii) Emergency repairs;

11 (iii) Any contract or purchase made by a county for a community
12 college under procedures authorized by the county charter or an act of the General
13 Assembly; or

14 (iv) Any contract or purchase that qualifies as a “small procurement”
15 as defined in the State Procurement Regulations.

16 (b) [All procurements shall be by competitive sealed bids, as described in this
17 section, unless one of the following methods is specifically authorized] **AT THE
18 DISCRETION OF THE PROCUREMENT OFFICER, THE FOLLOWING PROCUREMENT
19 METHODS ARE AUTHORIZED WHERE APPLICABLE:**

20 **(1) COMPETITIVE SEALED BIDS UNDER SUBSECTION (C) OF THIS
21 SECTION;**

22 ~~[(1)]~~ **(2)** Competitive sealed proposals under § 16–313 of this subtitle;

23 ~~[(2)]~~ **(3)** Sole source procurement under § 16–314 of this subtitle; or

24 ~~[(3)]~~ **(4)** Noncompetitive negotiation under § 16–314.1 of this subtitle.

25 **(c) (1) THE BOARD OF TRUSTEES MAY PROVIDE FOR PROCUREMENT BY
26 COMPETITIVE SEALED BIDS IN ACCORDANCE WITH THIS SUBSECTION.**

27 **(2) (I) WHENEVER PROCUREMENT IS BASED ON COMPETITIVE
28 SEALED BIDS, THE BOARD OF TRUSTEES, OR ITS DESIGNEE, SHALL SEEK BIDS BY
29 ISSUING AN INVITATION FOR BIDS.**

1 **[(1)] (II)** The board of trustees, at least 2 weeks before bids are to be filed,
2 shall advertise for bids in at least one newspaper published in the county **OR IN**
3 **EMARYLAND MARKETPLACE, IN ACCORDANCE WITH TITLE 17, SUBTITLE 5 OF THE**
4 **STATE FINANCE AND PROCUREMENT ARTICLE.**

5 **[(2)] (III)** The board of trustees may name in the specifications and
6 advertisements for bids the particular make, kind, or brand of article to be contracted for
7 or purchased.

8 **[(d) (1)] (3)** The board of trustees of each community college may provide for
9 the prequalification of persons as prospective responsible bidders for procurements other
10 than leases of real property.

11 **[(2)] (4)** If a board of trustees uses a prequalification procedure for
12 awarding a procurement contract:

13 (i) A person who is not prequalified may submit a bid or proposal;
14 and

15 (ii) After bid opening or receipt of proposals and before awarding the
16 procurement contract, a procurement officer may determine that:

17 1. A person who was not prequalified at the time of bid
18 opening or receipt of proposals is a responsible bidder; or

19 2. A prequalified person is not a responsible bidder.

20 **[(e) (1)] (5)** Except as provided in **[subsection (f)] PARAGRAPH (7)** of this
21 **[section] SUBSECTION**, the contract shall be awarded to the lowest responsible bidder, who
22 conforms to the specifications, with consideration given to:

23 (i) The quantities involved;

24 (ii) The time required for delivery;

25 (iii) The purpose for which required;

26 (iv) The competence and responsibility of the bidder; and

27 (v) The ability of the bidder to perform the contract satisfactorily.

28 **[(2)] (6)** The board of trustees may reject any and all bids and readvertise
29 for other bids.

1 [(f) (1)] (7) (I) In this [subsection] PARAGRAPH, the term “minority
2 business enterprise” has the meaning stated in § 14–301 of the State Finance and
3 Procurement Article.

4 [(2)] (II) In Montgomery County, by resolution and by implementing rules
5 and regulations, the Board of Trustees of Montgomery Community College shall establish
6 a mandatory minority business utilization program to facilitate the participation of
7 responsible certified minority business enterprises in contracts awarded by the Board of
8 Trustees of Montgomery Community College in accordance with competitive bidding
9 requirements.

10 [(h)] (D) A contract entered into or purchase made in violation of this section is
11 void.

12 16–313.

13 (a) (1) The board of trustees may provide for procurement by competitive
14 sealed proposals in accordance with the provisions of this section.

15 (2) The board of trustees may adopt regulations to implement the
16 provisions of this section.

17 (b) Competitive sealed proposals [may be used if:

18 (1) The procurement is for educational or consultant services;

19 (2) The procurement is for any building, improvement, equipment, or
20 supplies and the board of trustees or its designee determines that specifications cannot be
21 prepared that allow an award based on the lowest bid price, the lowest evaluated bid price,
22 or the bid most favorable to the college; or

23 (3) The board of trustees or its designee determines that:

24 (i) The need to use a method other than competitive sealed bids is
25 sufficiently compelling to override the general public policy that favors awarding
26 procurement contracts on the basis of competitive sealed bids; and

27 (ii) The use of competitive sealed bidding for that procurement
28 contract is not practicable or not advantageous to the college] **IS THE PREFERRED**
29 **PROCUREMENT METHOD FOR EDUCATIONAL OR CONSULTANT SERVICES.**

30 (c) (1) Whenever procurement is based on competitive sealed proposals, the
31 board of trustees or its designee shall seek proposals by issuing a request for proposals.

32 (2) A request for proposals shall include a statement of:

- 1 (i) The scope of the procurement contract;
- 2 (ii) The results to be achieved or services to be provided;
- 3 (iii) The factors, including price, that will be used in evaluating
4 proposals; and
- 5 (iv) The relative importance of each factor.

6 (d) The board of trustees or its designee shall publish a request for proposals in
7 the same manner as required for an invitation for bids.

8 (e) (1) After receipt of proposals but before the board of trustees awards the
9 procurement contract, the board or its designee may conduct discussions with an offeror to:

- 10 (i) Obtain the best price for the college; and
- 11 (ii) Ensure full understanding of:
- 12 1. The requirements of the college as set forth in the request
13 for proposals; and
- 14 2. The proposal submitted by the offeror.

15 (2) If discussions are conducted, the board of trustees or its designee:

- 16 (i) Shall conduct the discussions in accordance with regulations
17 adopted by the board;
- 18 (ii) Shall provide an opportunity to participate to each responsible
19 offeror who submits a proposal that, in the judgment of the board or its designee, is
20 reasonably susceptible of being selected for award;
- 21 (iii) Shall treat all of the responsible offerors fairly and equally;
- 22 (iv) May allow all of the responsible offerors to revise their initial
23 proposals by submitting best and final offers, if discussions indicate that it would be in the
24 best interests of the college to do so;
- 25 (v) May conduct more than one series of discussions and requests for
26 best and final offers; and
- 27 (vi) May not disclose to an offeror any information derived from a
28 proposal or discussions with a competing offeror.

29 (f) (1) Except as provided in paragraph (2) of this subsection:

1 (i) A proposal is irrevocable for the period specified in the request
2 for proposals; and

3 (ii) A best and final offer is irrevocable for the period specified in the
4 request for best and final offers.

5 (2) The board of trustees or its designee may allow an offeror to correct or
6 withdraw a proposal or best and final offer if correction or withdrawal is allowed under
7 regulations adopted by the board.

8 (g) After obtaining any approval required by law, the board of trustees shall
9 award the procurement contract to the responsible offeror who submits the proposal or best
10 and final offer determined to be the most advantageous to the college considering the
11 evaluation factors set forth in the request for proposals.

12 (h) The board of trustees may reject any and all proposals and readvertise for
13 other offers.

14 ~~SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,~~
15 ~~2017, the Maryland Higher Education Commission, in consultation with the~~
16 ~~Maryland-Delaware-District of Columbia Press Association and the Maryland Association~~
17 ~~of Community Colleges, shall:~~

18 ~~(1) study the use and cost of advertising for bids in at least one newspaper~~
19 ~~published in the county as required under § 16-311 of the Education Article; and~~

20 ~~(2) report to the Senate Education, Health, and Environmental Affairs~~
21 ~~Committee and the House Health and Government Operations Committee, in accordance~~
22 ~~with § 2-1246 of the State Government Article, on the findings of the study conducted under~~
23 ~~item (1) of this section.~~

24 SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.