

SB0829/344338/1

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 829
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, before “**Emergency**” insert “**State Procurement –**”; and in the same line, strike “**Reform**” and substitute “**Revisions and Reporting**”.

On pages 1 and 2, strike beginning with “altering” in line 3 on page 1 down through “regulations” in line 8 on page 2 and substitute “requiring the Special Secretary for the Office of Small, Minority, and Women Business Affairs, in consultation with the Secretary of Transportation and the Attorney General, to establish certain guidelines; requiring a unit’s procurement officer to obtain approval from the Chief Procurement Officer or the Chief Procurement Officer’s designee before making an emergency procurement under certain circumstances; requiring the Chief Procurement Officer or designee to approve or disapprove a certain request within a certain time frame after receiving the request; providing that if the Chief Procurement Officer or designee does not approve or disapprove a certain request within a certain time frame, the request shall be considered to be approved; requiring a procurement officer to evaluate a certain contractor’s ability to perform the requirements of an emergency procurement based on certain criteria under certain circumstances; requiring a procurement officer to execute a certain written contract for an emergency procurement under certain circumstances; prohibiting a unit from paying more than a certain amount in advance of or concurrent with the execution of a certain emergency procurement contract; prohibiting a unit from making certain additional payments under a certain emergency procurement contract for a certain period of time unless authorized by the Board of Public Works; requiring a unit to submit a copy of a certain emergency procurement contract to the Board within a certain period of time; authorizing the Board to review a certain emergency procurement contract at a certain meeting and to direct a unit or the appropriate control agency to take certain actions; altering certain reporting requirements related to emergency procurement contracts; adding certain reporting requirements for certain”.

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emergency procurement contracts; requiring an emergency procurement contract to include provisions addressing the contractor's ability to perform the requirements of the contract within a certain time frame; altering the time frame within which a procurement officer must submit a certain report to the Board; specifying when a unit is required to publish notice of a certain emergency procurement in eMaryland Marketplace; requiring a unit that awards a certain contract or contract modification as an emergency procurement to submit a certain report to the Board and a certain appropriate control agency within a certain period of time; specifying the contents of a certain report; authorizing the Board to adopt certain regulations; authorizing certain units of State government to make a procurement on an expedited basis under certain circumstances; reducing the number of days after the end of each fiscal year that a primary procurement unit has to submit a certain report concerning certain procurement contracts; requiring a primary procurement unit to submit a certain report to the Chief Procurement Officer instead of the Governor and the General Assembly; clarifying the types of procurement contracts that must be included in a certain report; requiring a certain report to include certain information on certain types of procurements; requiring the Chief Procurement Officer, within a certain number of days after the end of each fiscal year, to submit to the Governor and certain committees of the General Assembly a consolidated report that includes each report submitted to the Chief Procurement Officer by the primary procurement units as required under this Act; requiring a certain report to be submitted by the Department of General Services instead of the Department of Budget and Management; requiring that a report submitted to a committee of the General Assembly under this Act be submitted subject to a certain provision of law; requiring the Special Secretary for the Office of Small, Minority, and Women Business Affairs to report to certain committees of the General Assembly on or before a certain date; providing for the application of certain provisions of this Act; providing for the effective dates of this Act".

On page 2, after line 14, insert:

"BY repealing and reenacting, with amendments,
Article – State Finance and Procurement

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Section 13-108
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)
(As enacted by Section 1 of this Act)”.

AMENDMENT NO. 2

On page 2, in line 19, strike “A”; and in line 32, strike “DUE TO UNFORESEEN CAUSES”.

On pages 2 and 3, strike beginning with “(I)” in line 33 on page 2 down through “(3)” in line 8 on page 3.

On page 3, strike beginning with the comma in line 9 down through “QUOTES” in line 11; in line 14, strike the brackets; strike in their entirety lines 15 through 27, inclusive; in line 28, strike the brackets; in the same line, strike “(V) NOT MORE THAN 15 DAYS”; and in line 29, strike the brackets.

On pages 3 through 5, strike beginning with “IN” in line 30 on page 3 down through “AWARD.” in line 27 on page 5, inclusive, and substitute a period.

On page 6, in lines 12 and 13, in each instance, strike the bracket; strike beginning with “A” in line 13 down through “OFFICER” in line 14; in line 23, strike the second set of brackets; strike beginning with “EXCEPT” in line 23 down through “NOT” in line 24; and after line 29, insert:

“(H) THE SPECIAL SECRETARY FOR THE OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE ATTORNEY GENERAL, SHALL ESTABLISH GUIDELINES FOR EACH UNIT TO CONSIDER WHEN DETERMINING THE APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION PERCENTAGE GOAL AND OUTREACH FOR AN EMERGENCY PROCUREMENT CONTRACT.

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SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

13–108.

(a) In this section, “emergency” means an occurrence or condition that creates an immediate and serious need for services, materials, or supplies that:

(1) cannot be met through normal procurement methods; and

(2) are required to avoid or mitigate serious damage to public health, safety, or welfare.

(b) (1) Except as provided in § 11–205 (“Collusion”), § 10–204 (“Approval for designated contracts”), § 13–219 (“Required clauses – Nondiscrimination clause”), § 13–221 (“Disclosures to Secretary of State”), Title 16 (“Suspension and Debarment of Contractors”), or Title 17 (“Special Provisions – State and Local Subdivisions”) of this article, with the approval of the head of a unit, its procurement officer may make an emergency procurement by any method that the procurement officer considers most appropriate to avoid or mitigate serious damage to public health, safety, or welfare.

(2) (I) EXCEPT WHEN DELAYING A PROCUREMENT BY UP TO 48 HOURS WOULD LIKELY RESULT IN IMMINENT HARM, AFTER OBTAINING THE APPROVAL OF THE HEAD OF THE UNIT AND BEFORE MAKING AN EMERGENCY PROCUREMENT, THE PROCUREMENT OFFICER SHALL OBTAIN APPROVAL OF THE USE OF EMERGENCY PROCUREMENT PROCEDURES FROM THE CHIEF PROCUREMENT OFFICER, OR THE CHIEF PROCUREMENT OFFICER’S DESIGNEE.

(II) WITHIN 48 HOURS AFTER RECEIVING A REQUEST TO USE EMERGENCY PROCUREMENT PROCEDURES, THE CHIEF PROCUREMENT OFFICER OR DESIGNEE SHALL APPROVE OR DISAPPROVE THE REQUEST.

(III) IF THE CHIEF PROCUREMENT OFFICER OR DESIGNEE DOES NOT APPROVE OR DISAPPROVE THE REQUEST TO USE EMERGENCY PROCUREMENT PROCEDURES WITHIN 48 HOURS AFTER RECEIVING THE REQUEST, THE REQUEST SHALL BE CONSIDERED TO BE APPROVED.

(3) The procurement officer shall:

(i) obtain as much competition as possible under the circumstances, INCLUDING BY MAKING REASONABLE EFFORTS TO SOLICIT AT LEAST THREE ORAL QUOTES;

(ii) limit the emergency procurement to the procurement of only those items, both in type and quantity, necessary to avoid or to mitigate serious damage to public health, safety, or welfare; [and]

(III) BEFORE AWARDING AN EMERGENCY PROCUREMENT CONTRACT TO A PROSPECTIVE CONTRACTOR, EVALUATE THE CONTRACTOR'S ABILITY TO PERFORM THE REQUIREMENTS OF THE CONTRACT BASED ON:

1. THE LENGTH OF TIME THE CONTRACTOR HAS BEEN IN BUSINESS;

2. THE CONTRACTOR'S LEVEL OF EXPERIENCE PROVIDING THE TYPES AND AMOUNTS OF SUPPLIES, SERVICES, MAINTENANCE, COMMODITIES, CONSTRUCTION, OR CONSTRUCTION-RELATED SERVICES REQUIRED UNDER THE CONTRACT; AND

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**3. THE CONTRACTOR'S HISTORY OF SUCCESSFUL
PROCUREMENT CONTRACTS WITH THE STATE AND OTHER JURISDICTIONS;**

**(IV) EXECUTE A WRITTEN CONTRACT WITH THE SUCCESSFUL
CONTRACTOR WHICH INCLUDES THE TERMS OF THE EMERGENCY
PROCUREMENT; AND**

[iii] (V) NOT MORE THAN 15 DAYS after awarding the procurement contract, submit to the Board a written report that gives the justification for use of the emergency procurement procedure.

**(4) (I) THIS PARAGRAPH APPLIES ONLY TO AN EMERGENCY
PROCUREMENT CONTRACT WITH A VALUE OF \$1,000,000 OR MORE.**

**(II) 1. IN ADVANCE OF OR CONCURRENT WITH THE
EXECUTION OF AN EMERGENCY PROCUREMENT CONTRACT THAT IS SUBJECT TO
THIS PARAGRAPH, A UNIT MAY NOT PAY AN AMOUNT THAT EXCEEDS \$2,000,000,
PLUS 30% OF THE CONTRACT VALUE IN EXCESS OF \$2,000,000.**

**2. UNLESS AUTHORIZED BY THE BOARD, THE UNIT
MAY NOT MAKE ANY ADDITIONAL PAYMENT UNDER THE CONTRACT UNTIL AT
LEAST 30 DAYS AFTER THE EXECUTION OF THE CONTRACT.**

**(III) NOT LATER THAN 7 DAYS AFTER AWARDING AN
EMERGENCY PROCUREMENT CONTRACT THAT IS SUBJECT TO THIS PARAGRAPH,
A UNIT SHALL SUBMIT A COPY OF THE CONTRACT TO THE BOARD.**

(IV) THE BOARD MAY:

1. REVIEW AN EMERGENCY PROCUREMENT CONTRACT SUBMITTED UNDER THIS PARAGRAPH AT A REGULARLY SCHEDULED MEETING OF THE BOARD OR AT AN EMERGENCY MEETING CALLED FOR THAT PURPOSE; AND

2. DIRECT THE UNIT OR THE APPROPRIATE CONTROL AGENCY TO TAKE ANY ACTION, INCLUDING CANCELING OR RESCINDING THE CONTRACT, THAT THE BOARD DEEMS APPROPRIATE.

(5) IF SUPPLIES OR COMMODITIES PROCURED UNDER AN EMERGENCY PROCUREMENT CONTRACT ARE NOT DELIVERED AND USED WITHIN 1 MONTH AFTER THE DATE THE CONTRACT IS AWARDED, THE UNIT SHALL:

(I) PREPARE A REPORT DESCRIBING THE DELIVERY AND USE STATUS OF SUPPLIES AND COMMODITIES PROCURED UNDER THE CONTRACT AT LEAST ONCE PER MONTH UNTIL ALL SUPPLIES AND COMMODITIES HAVE BEEN DELIVERED AND USED; AND

(II) SUBMIT THE REPORTS PREPARED UNDER THIS PARAGRAPH TO THE BOARD, THE APPROPRIATE CONTROL AGENCY, AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE SENATE BUDGET AND TAXATION COMMITTEE, THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, AND THE JOINT AUDIT AND EVALUATION COMMITTEE.

(6) A PROCUREMENT CONTRACT AWARDED UNDER THIS SUBSECTION SHALL INCLUDE PROVISIONS ADDRESSING THE CONTRACTOR'S

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ABILITY TO PERFORM THE REQUIREMENTS OF THE CONTRACT WITHIN THE EMERGENCY TIME FRAME.

(7) NOTWITHSTANDING SUBSECTION (E) OF THIS SECTION, ON THE DAY OF THE EXECUTION AND APPROVAL OF A PROCUREMENT CONTRACT AWARDED UNDER THIS SUBSECTION, OR AS SOON AS PRACTICABLE THEREAFTER, A UNIT SHALL PUBLISH IN eMARYLAND MARKETPLACE NOTICE OF THE AWARD.

(8) (I) THIS PARAGRAPH APPLIES ONLY TO THE AWARD OF A CONTRACT OR A CONTRACT MODIFICATION MADE UNDER THIS SUBSECTION THAT, WITH PRIOR MODIFICATIONS, EXCEEDS \$50,000.

(II) WITHIN 15 DAYS AFTER AWARDING A CONTRACT OR A CONTRACT MODIFICATION, A UNIT SHALL SUBMIT TO THE BOARD AND THE APPROPRIATE CONTROL AGENCY A REPORT THAT INCLUDES:

1. THE BASIS AND JUSTIFICATION FOR THE EMERGENCY PROCUREMENT INCLUDING THE DATE THE EMERGENCY FIRST BECAME KNOWN;

2. A LISTING OF SUPPLIES, SERVICES, MAINTENANCE, COMMODITIES, CONSTRUCTION, OR CONSTRUCTION-RELATED SERVICES PROCURED;

3. THE NAMES OF ALL PERSONS SOLICITED AND A JUSTIFICATION IF THE SOLICITATION WAS LIMITED TO ONE PERSON;

4. THE PRICES AND TIMES OF PERFORMANCE PROPOSED BY THE PERSONS RESPONDING TO THE SOLICITATION;

5. THE NAME OF AND BASIS FOR THE SELECTION OF A PARTICULAR CONTRACTOR;

6. THE AMOUNT AND TYPE OF THE CONTRACT OR CONTRACT MODIFICATION;

7. A LISTING OF ANY PRIOR OR RELATED EMERGENCY CONTRACTS, INCLUDING ALL CONTRACT MODIFICATIONS, EXECUTED FOR THE PURPOSES OF AVOIDING OR MITIGATING THE PARTICULAR EMERGENCY, INCLUDING THE AGGREGATE COSTS; AND

8. THE IDENTIFICATION NUMBER, IF ANY, OF THE CONTRACT FILE.

(III) THE BOARD MAY ADOPT REGULATIONS TO CARRY OUT THIS PARAGRAPH.

(c) (1) Consistent with the requirements of subsection (b)(1) of this section, the State Highway Administration may enter into procurement contracts related to the pretreatment and removal of snow and ice as required or authorized under Title 8 of the Transportation Article.

(2) (i) Beginning on June 30, 2016, and no later than June 30 of each succeeding year, the State Highway Administration shall submit to the Board a written report on the operation and effectiveness of the procurement contracts entered into under this subsection during the previous year.

(ii) The report shall include:

1. the number of contracts awarded;

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2. the total dollar value of the contracts awarded; and

3. the amount of contracting dollars expended with minority business enterprises, certified small businesses, and certified veteran-owned businesses, as defined under Title 14 of this article.

(3) The Board, in consultation with the State Highway Administration, may adopt regulations to carry out the requirements of this subsection.

(d) (1) Except as provided in § 11–205 (“Collusion”), § 10–204 (“Approval for designated contracts”), § 13–219 (“Required clauses – Nondiscrimination clause”), § 13–221 (“Disclosures to Secretary of State”), Title 16 (“Suspension and Debarment of Contractors”), or Title 17 (“Special Provisions – State and Local Subdivisions”) of this article, with the approval of the head of the unit and the Board, [the Maryland Port Commission or the Maryland Aviation Administration] **A UNIT’S PROCUREMENT OFFICER** may make a procurement on an expedited basis if the head of the unit and the Board find that:

(i) urgent circumstances require prompt action;

(ii) an expedited procurement best serves the public interest; and

(iii) the need for the expedited procurement outweighs the benefits of making the procurement on the basis of competitive sealed bids or competitive sealed proposals.

(2) The procurement officer shall attempt to obtain as much competition as reasonably possible.

(e) [Not] **EXCEPT AS PROVIDED IN SUBSECTION (B)(7) OF THIS SECTION,** NOT more than 30 days after the execution and approval of a procurement contract

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awarded under this section, a unit shall publish in eMaryland Marketplace notice of the award.

(f) For real property leases procured under this section, the term of the lease shall be for the minimum period of time practicable.

(g) The Board may adopt regulations to carry out this section.

(h) The Special Secretary for the Office of Small, Minority, and Women Business Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish guidelines for each unit to consider when determining the appropriate minority business enterprise participation percentage goal and outreach for an emergency procurement contract.”.

On page 8, in line 12, strike the second “AND” and substitute “THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE,”; in line 13, after “COMMITTEE” insert “, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, AND THE JOINT AUDIT AND EVALUATION COMMITTEE”; in line 16, strike “Budget and Management” and substitute “GENERAL SERVICES”; and strike in their entirety lines 22 and 23 and substitute:

“SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 31, 2021, the Special Secretary for the Office of Small, Minority, and Women Business Affairs shall report to the Legislative Policy Committee, the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, the House Health and Government Operations Committee, and the Joint Audit and Evaluation Committee, in accordance with § 2-1257 of the State Government Article, on the status of establishing the guidelines for minority business enterprise participation goals required under Section 1 of this Act.

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SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2021.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2021.”.