

HOUSE BILL 1092

P2

11r2696

By: **Delegate Rosenberg**

Introduced and read first time: February 5, 2021

Assigned to: Appropriations and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Emergency and Expedited Procurements – Revisions and**
3 **Reporting**

4 FOR the purpose of requiring a unit's procurement officer to obtain approval from the Chief
5 Procurement Officer or the Chief Procurement Officer's designee before making an
6 emergency procurement under certain circumstances; requiring the Chief
7 Procurement Officer or designee to approve or disapprove a certain request within a
8 certain time frame after receiving the request; providing that if the Chief
9 Procurement Officer or designee does not approve or disapprove a certain request
10 within a certain time frame the request shall be considered to be approved; altering
11 the time frame within which a procurement officer must submit a certain report to
12 the Board of Public Works; specifying when a unit is required to publish notice of a
13 certain emergency procurement in eMaryland Marketplace; requiring a unit that
14 awards a certain contract or contract modification as an emergency procurement to
15 submit a certain report to the Board and a certain appropriate control agency within
16 a certain period of time; specifying the contents of a certain report; authorizing the
17 Board to adopt certain regulations; authorizing certain units of State government to
18 make a procurement on an expedited basis under certain circumstances; reducing
19 the number of days after the end of each fiscal year that a primary procurement unit
20 has to submit a certain report concerning certain procurement contracts; requiring
21 a primary procurement unit to submit a certain report to the Chief Procurement
22 Officer instead of the Governor and the General Assembly; clarifying the types of
23 procurement contracts that must be included in a certain report; requiring a certain
24 report to include certain information on certain types of procurements; requiring the
25 Chief Procurement Officer, within a certain number of days after the end of each
26 fiscal year, to submit to the Governor and certain committees of the General
27 Assembly a consolidated report that includes each report submitted to the Chief
28 Procurement Officer by the primary procurement units as required under this Act;
29 requiring that a report submitted to a committee of the General Assembly under this
30 Act be submitted subject to a certain provision of law; providing for the application

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of certain provisions of this Act; providing for the effective dates of this Act; defining
2 a certain term; and generally relating to State procurement.

3 BY repealing and reenacting, with amendments,
4 Article – State Finance and Procurement
5 Section 13–108 and 15–111
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2020 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 13–108
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2020 Supplement)
13 (As enacted by Section 1 of this Act)

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

16 **Article – State Finance and Procurement**

17 13–108.

18 (a) IN THIS SECTION, “EMERGENCY” MEANS AN OCCURRENCE OR
19 CONDITION THAT CREATES AN IMMEDIATE AND SERIOUS NEED FOR SERVICES,
20 MATERIALS, OR SUPPLIES THAT:

21 (1) CANNOT BE MET THROUGH NORMAL PROCUREMENT METHODS;
22 AND

23 (2) ARE REQUIRED TO AVOID OR MITIGATE SERIOUS DAMAGE TO
24 PUBLIC HEALTH, SAFETY, OR WELFARE.

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

32 (2) The procurement officer shall:

33 (i) obtain as much competition as possible under the circumstances;

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

4 (iii) after awarding the procurement contract, submit to the Board a
5 written report that gives the justification for use of the emergency procurement procedure.

6 **[(b)] (C)** (1) Consistent with the requirements of subsection **[(a)(1)] (B)(1)** of
7 this section, the State Highway Administration may enter into procurement contracts
8 related to the pretreatment and removal of snow and ice as required or authorized under
9 Title 8 of the Transportation Article.

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

14 (ii) The report shall include:

- 15 1. the number of contracts awarded;
- 16 2. the total dollar value of the contracts awarded; and
- 17 3. the amount of contracting dollars expended with minority
18 business enterprises, certified small businesses, and certified veteran-owned businesses,
19 as defined under Title 14 of this article.

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

22 **[(c)] (D)** (1) Except as provided in § 11–205 (“Collusion”), § 10–204 (“Approval
23 for designated contracts”), § 13–219 (“Required clauses – Nondiscrimination clause”), §
24 13–221 (“Disclosures to Secretary of State”), Title 16 (“Suspension and Debarment of
25 Contractors”), or Title 17 (“Special Provisions – State and Local Subdivisions”) of this
26 article, with the approval of the head of the unit and the Board, the Maryland Port
27 Commission or the Maryland Aviation Administration may make a procurement on an
28 expedited basis if the head of the unit and the Board find that:

- 29 (i) urgent circumstances require prompt action;
- 30 (ii) an expedited procurement best serves the public interest; and
- 31 (iii) the need for the expedited procurement outweighs the benefits of
32 making the procurement on the basis of competitive sealed bids or competitive sealed
33 proposals.

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

3 [[d)] (E) Not more than 30 days after the execution and approval of a
4 procurement contract awarded under this section, a unit shall publish in eMaryland
5 Marketplace notice of the award.

6 [(e)] (F) For real property leases procured under this section, the term of the
7 lease shall be for the minimum period of time practicable.

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

10 **Article – State Finance and Procurement**

11 13–108.

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

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

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

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

24 (2) **(I) AFTER OBTAINING THE APPROVAL OF THE HEAD OF THE
25 UNIT AND BEFORE MAKING AN EMERGENCY PROCUREMENT, THE PROCUREMENT
26 OFFICER SHALL OBTAIN APPROVAL OF THE USE OF EMERGENCY PROCUREMENT
27 PROCEDURES FROM THE CHIEF PROCUREMENT OFFICER, OR THE CHIEF
28 PROCUREMENT OFFICER’S DESIGNEE.**

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

32 **(III) IF THE CHIEF PROCUREMENT OFFICER OR DESIGNEE DOES
33 NOT APPROVE OR DISAPPROVE THE REQUEST TO USE EMERGENCY PROCUREMENT**

1 PROCEDURES WITHIN 48 HOURS AFTER RECEIVING THE REQUEST, THE REQUEST
2 SHALL BE CONSIDERED TO BE APPROVED.

3 (3) The procurement officer shall:

4 (i) obtain as much competition as possible under the circumstances;

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

8 (iii) NO MORE THAN 15 DAYS after awarding the procurement
9 contract, submit to the Board a written report that gives the justification for use of the
10 emergency procurement procedure.

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

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

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

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

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

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

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

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

1 **6. THE AMOUNT AND TYPE OF THE CONTRACT OR**
2 **CONTRACT MODIFICATION;**

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

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

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

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

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

19 (ii) The report shall include:

- 20 1. the number of contracts awarded;
- 21 2. the total dollar value of the contracts awarded; and
- 22 3. the amount of contracting dollars expended with minority
23 business enterprises, certified small businesses, and certified veteran-owned businesses,
24 as defined under Title 14 of this article.

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

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

34 (i) urgent circumstances require prompt action;

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

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

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

7 (e) **[Not] EXCEPT AS PROVIDED IN SUBSECTION (B)(4) OF THIS SECTION,**
8 **NOT** more than 30 days after the execution and approval of a procurement contract
9 awarded under this section, a unit shall publish in eMaryland Marketplace notice of the
10 award.

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

13 15–111.

14 (a) Within **[90] 60** days after the end of each fiscal year, each primary
15 procurement unit shall submit to the **[Governor and to the General Assembly] CHIEF**
16 **PROCUREMENT OFFICER** a report on each procurement contract that was awarded
17 during the preceding fiscal year, **WHETHER THE PROCUREMENT WAS CONDUCTED BY**
18 **THE PRIMARY PROCUREMENT UNIT OR SUBJECT TO REVIEW BY THE PRIMARY**
19 **PROCUREMENT UNIT**, and:

20 (1) was exempt from the notice requirements of § 13–103(c) of this article
21 because the procurement officer reasonably expected that the procurement contract would
22 be performed entirely outside this State and the District of Columbia;

23 (2) cost more than \$100,000 and was awarded for the procurement of
24 services, construction related services, architectural services, or engineering services; or

25 (3) was awarded on the basis of:

26 (i) § 13–107 of this article (“Sole source procurement”);

27 (ii) § 13–108(a) of this article (“Emergency procurement”); or

28 (iii) § 13–108(c) of this article (“Expedited procurement”).

29 (b) (1) A report required under subsection (a)(2) or (3) of this section shall
30 include:

31 (i) the name of each contractor;

1 (ii) the type and cost of the procurement contract; and

2 (iii) a description of the procurement.

3 (2) A report required under subsection (a)(3) of this section [also] shall
4 [describe] **INCLUDE:**

5 **(I) A DESCRIPTION OF the basis for the award;**

6 **(II) THE IDENTITY OF THE DEPARTMENT OR AGENCY THAT**
7 **AWARDED THE CONTRACT;**

8 **(III) THE IDENTITY OF ANY AGENCY OFFICIAL REQUIRED TO**
9 **AUTHORIZE THE CONTRACT FOR AWARD;**

10 **(IV) THE AWARD DATE OF THE PROCUREMENT CONTRACT AND**
11 **THE FINAL DATE OF THE CONTRACT TERM;**

12 **(V) THE DATE THE CONTRACT AWARD WAS POSTED TO**
13 **EMARYLAND MARKETPLACE; AND**

14 **(VI) FOR PROCUREMENTS AWARDED UNDER § 13-108(A) OF**
15 **THIS ARTICLE (“EMERGENCY PROCUREMENT”):**

16 **1. THE NUMBER OF DAYS BETWEEN THE AGENCY’S**
17 **DECLARATION OF AN EMERGENCY PROCUREMENT AND THE CONTRACT AWARD**
18 **DATE;**

19 **2. THE DATE OF THE EMERGENCY DECLARATION FOR**
20 **EACH PROCUREMENT; AND**

21 **3. FOR AN AWARD THAT MUST BE REPORTED TO THE**
22 **BOARD, THE DATE THE AWARD WAS REPORTED TO THE BOARD.**

23 **(C) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, THE CHIEF**
24 **PROCUREMENT OFFICER SHALL SUBMIT TO THE GOVERNOR, THE LEGISLATIVE**
25 **POLICY COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, AND THE**
26 **HOUSE APPROPRIATIONS COMMITTEE A CONSOLIDATED REPORT THAT INCLUDES**
27 **EACH REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.**

28 **[(c)] (D)** Within 90 days after the end of each fiscal year, the Department of
29 Budget and Management shall submit to the Board and the General Assembly a report on

1 each class of procurement for which the procedure for noncompetitive negotiated
2 procurement has been approved under § 13–106 of this article.

3 [(d)] (E) A report to the General Assembly **OR A COMMITTEE OF THE**
4 **GENERAL ASSEMBLY** under this section is subject to § 2–1257 of the State Government
5 Article.

6 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
7 effect October 1, 2021.

8 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
9 3 of this Act, this Act shall take effect July 1, 2021.