

CHAPTER 216

(Senate Bill 187)

AN ACT concerning

State Procurement – ~~Structuring and~~ Bundling of Procurements

FOR the purpose of prohibiting a unit of State government subject to the State procurement law from ~~structuring or~~ bundling a procurement, limiting the number of competitive bidders or offerors, or limiting certain participation to a predetermined group of bidders or offerors for the purpose of precluding or limiting participation by certain entities under certain circumstances; providing for the application of this Act; defining a certain term; and generally relating to prohibitions governing the ~~structuring or~~ bundling of a procurement.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 11–201
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

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

Article – State Finance and Procurement

11–201.

- (a) The purposes and policies of this Division II include:
- (1) providing for increased confidence in State procurement;
 - (2) ensuring fair and equitable treatment of all persons who deal with the State procurement system;
 - (3) providing safeguards for maintaining a State procurement system of quality and integrity;
 - (4) fostering effective broad-based competition in the State through support of the free enterprise system;
 - (5) promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;

- (6) providing increased economy in the State procurement system;
- (7) getting the maximum benefit from the purchasing power of the State;
- (8) simplifying, clarifying, and modernizing the law that governs State procurement;
- (9) allowing the continued development of procurement regulations, policies, and practices in the State; and
- (10) promoting development of uniform State procurement procedures to the extent possible.

(b) Unless otherwise indicated, this Division II shall be construed liberally and applied to promote the purposes and policies enumerated in subsection (a) of this section.

(c) If a provision of this Division II is inconsistent with a federal law, regulation, or grant agreement or other federal requirement that governs procurement or a procurement contract or with the terms of a gift, as defined in Article 1, § 22 of the Code, the federal requirement or the terms of the gift control the procurement or procurement contract.

(D) (1) IN THIS SUBSECTION, ~~“CONTRACT BUNDLING”~~ MEANS SUBSECTION, “BUNDLE” MEANS THE CONSOLIDATION OF TWO OR MORE PROCUREMENT REQUIREMENTS FOR ~~GOODS~~ SUPPLIES OR SERVICES PREVIOUSLY PROVIDED OR PERFORMED UNDER SEPARATE CONTRACTS INTO A SINGLE SOLICITATION SEEKING OFFERS FOR A SINGLE CONTRACT THAT IS UNLIKELY TO BE ACCESSIBLE FOR AWARD TO A SMALL BUSINESS OR MINORITY BUSINESS ENTERPRISE.

(2) THIS SUBSECTION DOES NOT APPLY IF A UNIT BUNDLES A PROCUREMENT FOR THE PURPOSE OF PARTICIPATING IN THE SMALL BUSINESS RESERVE PROGRAM IN ACCORDANCE WITH TITLE 14, SUBTITLE 5 OF THIS ARTICLE.

~~(2) (3) EXCEPT FOR THE PURPOSE OF A UNIT'S PARTICIPATION IN THE SMALL BUSINESS RESERVE PROGRAM IN ACCORDANCE WITH TITLE 14, SUBTITLE 5 OF THIS ARTICLE, A UNIT SUBJECT TO THIS DIVISION II MAY NOT STRUCTURE OR BUNDLE A PROCUREMENT FOR THE PURPOSE OF~~ FOR THE PURPOSE OF PRECLUDING OR LIMITING PARTICIPATION BY A MINORITY BUSINESS ENTERPRISE AS DEFINED UNDER TITLE 14, SUBTITLE 3 OF THIS

ARTICLE OR A SMALL BUSINESS AS DEFINED UNDER TITLE 14, SUBTITLE 2 OF THIS ARTICLE A UNIT SUBJECT TO THIS DIVISION II MAY NOT:

(I) ~~PRECLUDING PARTICIPATION BY MINORITY BUSINESS ENTERPRISES UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE OR ANY OTHER SMALL BUSINESS AS DEFINED UNDER TITLE 14, SUBTITLE 2 OF THIS ARTICLE~~ **BUNDLE A PROCUREMENT;**

(II) ~~LIMITING~~ **LIMIT** THE NUMBER OF COMPETITIVE BIDDERS OR OFFERORS; **OR**

(III) ~~LIMITING~~ **LIMIT** PARTICIPATION TO A PREDETERMINED GROUP OF BIDDERS OR OFFERORS; ~~OR.~~

~~(IV) CONTRACT BUNDLING.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 7, 2009.