

Chapter 482

(Senate Bill 479)

AN ACT concerning

Transportation – Procurement for MARC Train Service –~~Disclosure~~ ~~Requirements Regarding Involvement in Deportations~~

FOR the purpose of ~~requiring certain entities that submit a bid or proposal to the Maryland Department of Transportation or certain other units of the State or local government to provide certain MARC train service to submit a certain statement concerning certain deportation activity in which the entity may have engaged; requiring an entity to include certain information in the statement; requiring the Department of Transportation or certain other units of the State or local government to consider certain information provided by certain entities seeking to provide certain MARC train service; defining certain terms; and generally relating to the disclosure of certain information by entities that submit bids or proposals on procurement contracts to provide certain MARC train service.~~ *prohibiting certain entities from being considered a responsible bidder or offeror for certain contracts to provide Maryland Area Regional Commuter (MARC) service unless the entities comply with certain requirements; requiring that, in conjunction with the submission of certain bids or offers, certain entities provide certain units with a certain statement and estimated date for completing a certain process of assembling records; requiring certain entities to notify certain units of changes to a certain estimated date; requiring certain entities to comply with certain requirements for a certain process of assembling records; requiring certain entities to contract with certain archivists and historians to conduct a certain initial analysis and ensure that a certain process of assembling records is conducted in a certain manner; establishing requirements for a certain initial analysis; requiring certain entities to submit certain information to the State Archivist after a certain process of assembling records is completed; requiring the State Archivist to approve certain archivists, historians, and initial reports; requiring the State Archivist to provide certain guidance and oversight; requiring the State Archivist to make certain determinations and provide certain written notice of the determination to certain units; authorizing the State Archivist to use a designee to carry out certain provisions; requiring certain units to provide notice of intent to award certain contracts within a certain period of time; prohibiting certain units from awarding certain contracts to certain entities that do not comply with certain provisions; authorizing certain units to award certain entities after receiving certain notice; providing that certain prohibitions do not apply if a contract is awarded to certain bidders or offerors; authorizing certain entities to award certain contracts to certain entities after receiving certain notice; providing that, notwithstanding certain requirements, certain units may award certain contracts*

to certain bidders or offerors; prohibiting certain entities, bidders, or offerors from submitting certain protests; requiring that certain entities that submit certain bids or proposals to the Maryland Transit Administration comply with certain requirements; providing for the application of this Act; defining certain terms; and generally relating to procurement for MARC service and requirements for assembling records and disclosing information related to the deportation of victims.

BY adding to

Article – State Finance and Procurement

Section 12–501 through ~~12–504~~ 12–511 to be under the new subtitle “Subtitle 5.

Disclosure Requirements Regarding Involvement in Deportations”

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY adding to

Article – Transportation

Section 7–508

Annotated Code of Maryland

(2008 Replacement Volume and 2010 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

SUBTITLE 5. DISCLOSURE REQUIREMENTS REGARDING INVOLVEMENT IN DEPORTATIONS.

12–501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(B) “DEPARTMENT” MEANS THE MARYLAND DEPARTMENT OF TRANSPORTATION.~~

~~(C)~~ (B) “DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS” MEANS OWNERSHIP OR OPERATION OF THE TRAINS ON WHICH INDIVIDUALS WERE ~~DEPORTED~~ TRANSPORTED TO EXTERMINATION CAMPS, DEATH CAMPS, OR ANY FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON ~~JANUARY 1, 1942~~ SEPTEMBER 1, 1939, AND ENDING ON ~~DECEMBER 31, 1944~~ SEPTEMBER 2, 1945.

~~(D)~~ (C) “ENTITY” MEANS:

(1) A CORPORATION, AFFILIATE, OR OTHER SIMILAR ORGANIZATION OR A SUCCESSOR IN INTEREST OF THE CORPORATION, AFFILIATE, OR SIMILAR ORGANIZATION THAT CONTROLS, OR IS CONTROLLED OR OWNED OR PARTIALLY OWNED BY OR UNDER COMMON CONTROL WITH, A CORPORATION THAT ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; OR

(2) A MEMBER OF A PARTNERSHIP OR A CONSORTIUM THAT INCLUDES AN ENTITY THAT CERTIFIES THAT IT ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS.

(D) "MARC" MEANS THE MARYLAND AREA REGIONAL COMMUTER.

(E) (1) "PROPERTY" MEANS ANY PERSONAL BELONGINGS OWNED OR CONTROLLED BY VICTIMS ~~OF THE DEPORTATIONS TO EXTERMINATION CAMPS, DEATH CAMPS, OR FACILITIES USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS, DURING THE PERIOD BEGINNING ON JANUARY 1, 1942, AND ENDING ON DECEMBER 31, 1944.~~

(2) "PROPERTY" INCLUDES:

- (I) JEWELRY;
- (II) BOOKS;
- (III) ARTIFACTS;
- (IV) PRECIOUS METALS; AND
- (V) CURRENCY.

(F) "PROCESS OF ASSEMBLING THE RECORDS" MEANS TO:

(1) ORGANIZE, DIGITIZE, AND MAKE RECORDS AVAILABLE TO THE PUBLIC IN AN INTERNET ACCESSIBLE, ELECTRONIC FORMAT THAT IS SEARCHABLE AND ANALYZABLE; AND

(2) PREPARE TO SUBMIT THE INFORMATION DESCRIBED IN § 12-507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

~~(F)~~ (G) (1) "RECORDS" MEANS MATERIAL RELATING TO THE DEPORTATION OF VICTIMS.

(2) “RECORDS” INCLUDES:**~~(1)~~ (I) DOCUMENTS;****~~(2)~~ (II) CORRESPONDENCE;****~~(3)~~ (III) MEMORANDA;****~~(4)~~ (IV) RECEIPTS;****~~(5)~~ (V) INVOICES;****~~(6)~~ (VI) PRESENTATIONS;****~~(7)~~ (VII) AUDITS; AND****~~(8)~~ (VIII) ANY OTHER MATERIALS RELATED TO ITEMS (1) THROUGH (7) OF THIS SUBSECTION.**

(H) “VICTIM” MEANS AN INDIVIDUAL WHO WAS ON AN ENTITY’S TRAIN FOR THE PURPOSE OF BEING TRANSPORTED TO AN EXTERMINATION CAMP, DEATH CAMP, OR A FACILITY USED TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BEGINNING ON SEPTEMBER 1, 1939 AND ENDING ON SEPTEMBER 2, 1945.

12-502.**FOR THE PURPOSES OF THIS SUBTITLE:****(1) TWO OR MORE ENTITIES SHALL BE CONSIDERED AS THE SAME ENTITY IF:****(I) ONE ENTITY IS A WHOLLY OWNED SUBSIDIARY OF THE OTHER; OR****(II) ONE ENTITY OWNS OR DIRECTLY OR INDIRECTLY CONTROLS MORE THAN 50% OF THE VOTING SECURITIES OF THE OTHER ENTITY, REGARDLESS OF WHETHER THE EQUITY INTEREST IN THAT OTHER ENTITY IS OWNED BY A FOREIGN GOVERNMENT; AND****(2) IF AN EQUITY INTEREST IN AN ENTITY IS OR WAS OWNED BY A FOREIGN GOVERNMENT, THAT EQUITY INTEREST SHALL BE ATTRIBUTED TO THE ENTITY.**

12-503.

THIS SUBTITLE APPLIES TO AN ENTITY THAT:

(1) ~~HAS~~ HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; AND

(2) SUBMITS A BID OR OFFER TO A UNIT OF STATE OR LOCAL GOVERNMENT ON A PROCUREMENT CONTRACT ~~WITH THE DEPARTMENT OR WITH ANY OTHER UNIT OF THE STATE OR LOCAL GOVERNMENT~~ TO PROVIDE MARC ~~TRAIN~~ SERVICE THAT IS FUNDED IN WHOLE OR IN PART WITH PUBLIC FUNDS.

12-504.

AN ENTITY MAY NOT BE CONSIDERED A RESPONSIBLE BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE UNLESS THE ENTITY COMPLIES WITH THE REQUIREMENTS OF §§ 12-505 THROUGH 12-507 OF THIS SUBTITLE.

~~12-504.~~ 12-505.

(A) ~~BEFORE SUBMITTING~~ IN CONJUNCTION WITH THE SUBMISSION OF A FORMAL BID OR OFFER ON A PROCUREMENT CONTRACT TO ~~THE DEPARTMENT OR OTHER UNIT OF THE~~ A UNIT OF STATE OR LOCAL GOVERNMENT TO PROVIDE MARC ~~TRAIN~~ SERVICE, AN ENTITY SHALL SUBMIT TO THE UNIT:

(1) ~~CERTIFY TO THE DEPARTMENT OR UNIT WHETHER~~ A STATEMENT THAT THE ENTITY HAS HAD DIRECT INVOLVEMENT IN THE DEPORTATION OF VICTIMS; AND

(2) ~~DISCLOSE TO THE DEPARTMENT OR OTHER UNIT THE INFORMATION DESCRIBED IN SUBSECTION (B) OF THIS SECTION~~ AN ESTIMATED DATE FOR COMPLETING THE PROCESS OF ASSEMBLING THE RECORDS AND PROVIDING INFORMATION TO THE STATE ARCHIVIST IN ACCORDANCE WITH §§ 12-506 AND 12-507 OF THIS SUBTITLE.

(B) THE ENTITY SHALL NOTIFY THE UNIT OF ANY CHANGE IN THE ESTIMATED DATE THAT WAS SUBMITTED TO THE UNIT IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

12-506.

(A) BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE, THE ENTITY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION FOR THE PROCESS OF ASSEMBLING THE RECORDS RELATED TO THE DEPORTATION OF VICTIMS.

(B) (1) AN ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO CONDUCT AN INITIAL ANALYSIS OF THE RECORDS.

(2) THE ARCHIVIST AND HISTORIAN THAT CONDUCT THE INITIAL ANALYSIS SHALL:

(I) BE APPROVED BY THE STATE ARCHIVIST;

(II) BE INDEPENDENT OF THE ENTITY; AND

(III) CONDUCT THE ANALYSIS IN ACCORDANCE WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(3) THE INITIAL ANALYSIS SHALL INCLUDE:

(I) AN INSPECTION OF EACH LOCATION IN WHICH THE ENTITY MAINTAINS RECORDS THAT MAY BE RELATED TO THE DEPORTATION OF VICTIMS; AND

(II) A REPORT SUBMITTED TO THE STATE ARCHIVIST.

(4) THE INITIAL REPORT SUBMITTED TO THE STATE ARCHIVIST SHALL INCLUDE:

(I) A LIST OF EACH LOCATION INSPECTED AND AN ASSESSMENT OF WHETHER THE LOCATION MAINTAINS ANY RECORDS;

(II) AN OUTLINE AND ASSESSMENT OF THE QUALITY OF THE RECORDS;

(III) A TIMELINE FOR THE PROCESS TO ASSEMBLE THE RECORDS; AND

(IV) AN ESTIMATED COST TO ASSEMBLE THE RECORDS.

(C) (1) AFTER THE INITIAL ANALYSIS IS CONCLUDED AND THE STATE ARCHIVIST HAS APPROVED THE INITIAL REPORT IN ACCORDANCE WITH §

12-508(A)(2)(I) OF THIS SUBTITLE, THE ENTITY SHALL CONTRACT WITH AN ARCHIVIST AND A HISTORIAN TO ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

(I) THE INITIAL REPORT; AND

(II) THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS.

(2) THE ARCHIVIST AND HISTORIAN CONTRACTED WITH TO CARRY OUT PARAGRAPH (1) OF THIS SUBSECTION:

(I) SHALL BE APPROVED BY THE STATE ARCHIVIST; AND

(II) MAY BE THE ARCHIVIST AND HISTORIAN THAT CONDUCTED THE INITIAL ANALYSIS OR ANOTHER ARCHIVIST AND HISTORIAN APPROVED BY THE STATE ARCHIVIST.

(D) AFTER THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE, THE ENTITY SHALL PROVIDE THE INFORMATION REQUIRED UNDER § 12-507 OF THIS SUBTITLE TO THE STATE ARCHIVIST.

~~(B) AN~~

12-507.

BEFORE A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY SUBJECT TO THIS SUBTITLE, THE ENTITY SHALL STATE, AS TO THE DEPORTATION OF INDIVIDUALS TO EXTERMINATION CAMPS, DEATH CAMPS, OR A FACILITY TO TRANSITION INDIVIDUALS TO EXTERMINATION CAMPS OR DEATH CAMPS DURING THE PERIOD BETWEEN JANUARY 1, 1942, AND DECEMBER 31, 1944 PROVIDE THE STATE ARCHIVIST WITH THE FOLLOWING INFORMATION AS IT RELATES TO THE DEPORTATION OF VICTIMS:

(1) A WRITTEN STATEMENT PROVIDING:

(I) WHETHER THE ENTITY ~~HAS ANY~~ POSSESSES, HAS CUSTODY OF, OR CONTROLS RECORDS RELATING TO THE ~~DEPORTATIONS IN ITS POSSESSION, CUSTODY, OR CONTROL~~ DEPORTATION OF VICTIMS;

(II) ~~THE~~ EACH LOCATION WHERE THE RECORDS ARE MAINTAINED; AND

(III) THE CONTENTS AND ADDRESSES OF ~~ANY~~ EACH ARCHIVE OR OTHER FACILITY WHERE THE ENTITY MAINTAINS RECORDS;

(2) A DETAILED INDEX OF THE RECORDS, INCLUDING:

(I) THE LOCATION OF THE RECORDS AND A LIST OF ANY MONEY RECEIVED FOR EACH DEPORTATION, DELINEATED BY INDIVIDUAL CONVOYS AND PERSONS; AND

(II) AN ACCOUNTING OF EACH PIECE OF PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ FROM EACH VICTIM;

(3) IF THE ENTITY NO LONGER HAS IN ITS CUSTODY OR CONTROL ANY OR ALL OF THE PROPERTY TAKEN OR CONFISCATED ~~IN CONNECTION WITH THE DEPORTATIONS~~ FROM EACH VICTIM, A WRITTEN DESCRIPTION OF:

(I) THE TIME AND MANNER IN WHICH THE ENTITY DISPOSED OF OR CONVERTED THE PROPERTY;

(II) ANY PROPERTY CURRENTLY OWNED OR OPERATED BY THE ENTITY THAT WAS EXCHANGED FOR THE EXPROPRIATED PROPERTY;

(III) ANY EXPROPRIATED PROPERTY CURRENTLY OWNED BY THE ENTITY OR ANY OTHER PROPERTY DERIVED FROM THE EXPROPRIATED PROPERTY; AND

(IV) ANY OTHER DERIVATIVE OR TRACEABLE PROPERTY THAT REMAINS IN THE ENTITY'S POSSESSION, CUSTODY, OR CONTROL AS A RESULT OF ITS DEPORTATIONS ACTIVITY; AND

~~(4) IF ANY RECORDS RELATING TO THE DEPORTATIONS HAVE BEEN MADE PUBLIC, A CONFIRMATION THAT THE MATERIALS MADE AVAILABLE FOR PUBLIC REVIEW CONSTITUTE ALL OF THE RECORDS, REGARDLESS OF THE DATE THE RECORDS WERE CREATED OR OBTAINED; AND~~

~~(5) A WRITTEN STATEMENT CONCERNING~~ WHETHER THE ENTITY HAS PROVIDED RESTITUTION OR REPARATIONS TO ALL IDENTIFIABLE VICTIMS OF THE DEPORTATIONS AND, IF SO STATED, A DETAILED ~~REPORT~~ DESCRIPTION ON HOW THE RESTITUTION OR REPARATIONS APPLIES SPECIFICALLY TO ~~INDIVIDUALS DEPORTED BY THE ENTITY~~ THE DEPORTATION OF EACH VICTIM.

12-508.

(A) THE STATE ARCHIVIST SHALL:

(1) APPROVE AN ARCHIVIST AND HISTORIAN TO CONDUCT THE INITIAL ANALYSIS REQUIRED UNDER § 12-506(B) OF THIS SUBTITLE;

(2) WITHIN 14 DAYS AFTER RECEIVING THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12-506(B) OF THIS SUBTITLE:

(I) REVIEW THE REPORT AND DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST, THE REPORT IS CONSISTENT WITH THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(II) APPROVE AN ARCHIVIST AND HISTORIAN THAT WILL ENSURE THAT THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS;

(3) AS NEEDED, PROVIDE GUIDANCE FOR AND OVERSIGHT OF THE PROCESS OF ASSEMBLING THE RECORDS;

(4) AFTER RECEIVING FROM AN ENTITY THE INFORMATION REQUIRED UNDER § 12-507 OF THIS SUBTITLE, DETERMINE WHETHER, IN THE PROFESSIONAL OPINION OF THE STATE ARCHIVIST:

(I) THE PROCESS OF ASSEMBLING THE RECORDS IS COMPLETE;

(II) THE PROCESS OF ASSEMBLING THE RECORDS WAS COMPLETED IN A MANNER CONSISTENT WITH:

1. THE INITIAL REPORT SUBMITTED IN ACCORDANCE WITH § 12-506(B) OF THIS SUBTITLE; AND

2. THE STANDARDS OF THE SOCIETY OF AMERICAN ARCHIVISTS AND THE COUNCIL OF STATE ARCHIVISTS; AND

(III) THE INFORMATION SUBMITTED UNDER § 12-507 OF THIS SUBTITLE IS AS COMPLETE AND ACCURATE AS POSSIBLE; AND

(5) PROVIDE WRITTEN NOTICE OF THE DETERMINATION MADE UNDER ITEM (4) OF THIS SUBSECTION TO:

(I) THE ENTITY; AND

(II) IF THE STATE ARCHIVIST DETERMINES THAT THE ENTITY MET THE REQUIREMENTS SET FORTH IN ITEM (4)(I), (II), AND (III) OF THIS SUBSECTION, TO THE UNIT OF STATE OR LOCAL GOVERNMENT AWARDDING THE PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE.

(B) THE STATE ARCHIVIST MAY USE A DESIGNEE TO CARRY OUT ANY PROVISION OF THIS SECTION.

12-509.

(A) AT LEAST 30 DAYS BEFORE AWARDDING A PROCUREMENT CONTRACT ON WHICH AN ENTITY SUBJECT TO THIS SUBTITLE SUBMITTED A BID OR OFFER, A UNIT OF STATE OR LOCAL GOVERNMENT SHALL PUBLISH NOTICE OF ITS INTENT TO AWARD THE PROCUREMENT CONTRACT.

(B) A UNIT OF STATE OR LOCAL GOVERNMENT MAY NOT AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY THAT DOES NOT COMPLY WITH §§ 12-505 THROUGH 12-507 OF THIS SUBTITLE.

(C) A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO AN ENTITY ONLY AFTER THE UNIT RECEIVES THE NOTICE FROM THE STATE ARCHIVIST IN ACCORDANCE WITH § 12-508(A)(5) OF THIS SUBTITLE.

(D) NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBTITLE, A UNIT OF STATE OR LOCAL GOVERNMENT MAY AWARD A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE TO A BIDDER OR OFFEROR THAT IS NOT AN ENTITY SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE.

12-510.

AN ENTITY AWARDED A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE IN ACCORDANCE WITH § 12-509(C) OF THIS SUBTITLE IS CONSIDERED TO HAVE SATISFIED THE REQUIREMENTS OF §§ 12-505 THROUGH 12-507 OF THIS SUBTITLE FOR ALL FUTURE PROCUREMENT CONTRACTS TO PROVIDE MARC SERVICE.

12-511.

THE ENTITY OR ANY OTHER BIDDER OR OFFEROR FOR A PROCUREMENT CONTRACT TO PROVIDE MARC SERVICE MAY NOT SUBMIT A PROTEST UNDER § 15-217 OF THIS ARTICLE RELATING TO THE REQUIREMENTS OF THIS SUBTITLE.

Article – Transportation

7-508.

AN ENTITY THAT SUBMITS A BID OR PROPOSAL TO THE ADMINISTRATION ~~ON A PROCUREMENT CONTRACT TO PROVIDE MARC TRAIN SERVICE ON THE CAMDEN AND BRUNSWICK LINES IN THE GREATER BALTIMORE WASHINGTON METROPOLITAN REGION~~ SERVICE THAT IS FUNDED IN WHOLE OR IN PART BY PUBLIC FUNDS SHALL COMPLY WITH THE REQUIREMENTS OF TITLE 12, SUBTITLE 5 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2011~~ June 1, 2011.

Approved by the Governor, May 19, 2011.