

HOUSE BILL 1319

P2, P1

3lr2290

By: **Delegates Rosenberg, Carter, Oaks, and Tarrant**

Introduced and read first time: February 8, 2013

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Competitive Sealed Proposals – Construction Contracts –**
3 **Economic Inclusion Plans**

4 FOR the purpose of requiring certain universities to follow certain provisions of law
5 regarding certain procurements for construction contracts; authorizing the use
6 of competitive sealed proposals for certain procurements for construction;
7 requiring certain procurements to comply with certain provisions of law
8 regarding competitive sealed proposals; requiring certain offerors and
9 contractors to make a certain effort to comply with certain provisions of law
10 regarding minority business enterprise; requiring certain requests for proposals
11 to include certain statements on economic inclusion plans and identify certain
12 counties; authorizing a unit to conduct certain discussions on economic inclusion
13 plans; requiring that economic inclusion plans be prepared by certain offerors to
14 promote the involvement and training of certain locally owned businesses and
15 local residents; requiring that economic inclusion plans include certain
16 procedures, goals, processes, and information; authorizing certain units to waive
17 certain requirements for economic inclusion plans under certain circumstances;
18 requiring certain units to consider certain factors when evaluating an economic
19 inclusion plan; requiring certain contractors to carry out certain economic
20 inclusion plans; requiring certain third-party contractors to make certain
21 determinations of compliance; authorizing certain actions to occur under certain
22 circumstances; requiring the Board of Public Works to adopt certain
23 regulations; requiring the Board to report to certain committees of the General
24 Assembly on or before certain dates; providing for the termination of this Act;
25 defining certain terms; and generally relating to procurement, competitive
26 sealed proposals, construction contracts, and economic inclusion plans.

27 BY repealing and reenacting, with amendments,
28 Article – State Finance and Procurement
29 Section 11–203(e) and 13–104
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2012 Supplement)

2 BY adding to

3 Article – State Finance and Procurement

4 Section 13–501 through 13–508 to be under the new subtitle “Subtitle 5.

5 Competitive Sealed Proposals for Construction Contracts”

6 Annotated Code of Maryland

7 (2009 Replacement Volume and 2012 Supplement)

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

10 **Article – State Finance and Procurement**

11 11–203.

12 (e) (1) In this subsection, “University” means the University System of
13 Maryland, Morgan State University, or St. Mary’s College of Maryland.

14 (2) Except as otherwise provided in this subsection, this Division II
15 does not apply to the University System of Maryland, Morgan State University, or St.
16 Mary’s College of Maryland.

17 (3) (i) A procurement by a University shall comply with the
18 policies and procedures developed by the University and approved by the Board of
19 Public Works and the Administrative, Executive, and Legislative Review Committee of
20 the General Assembly in accordance with § 12–112 of the Education Article for the
21 University System of Maryland, § 14–109 of the Education Article for Morgan State
22 University, or § 14–405(f) of the Education Article for St. Mary’s College of Maryland.

23 (ii) 1. The review and approval of the Board of Public Works
24 shall be required for the following types of contracts with a value that exceeds
25 \$1,000,000:

26 A. capital improvements;

27 B. services; and

28 C. dispositions of personal property subject to § 10–305
29 of this article, except for dispositions of personal property that was purchased with the
30 proceeds of a general obligation loan.

31 2. In its review of a contract for services or capital
32 improvements with a value that exceeds \$1,000,000, the Board of Public Works may
33 request the comments of the appropriate agencies, including the Department of
34 Budget and Management and the Department of General Services.

1 (4) A University's policies shall:

2 (i) to the maximum extent practicable, require the purchasing
3 of supplies and services in accordance with Title 14, Subtitle 1 of this article; and

4 (ii) promote the purposes of the regulations adopted by the
5 Department of General Services governing the procurement of architectural and
6 engineering services.

7 (5) (i) Except as provided in paragraph (7) of this subsection, the
8 following provisions of Division II of this article apply to a University:

9 1. § 11–205 of this subtitle (“Collusion”);

10 2. § 11–205.1 of this subtitle (“Falsification,
11 concealment, etc., of material facts”);

12 3. § 13–219 of this article (“Required clauses –
13 Nondiscrimination clause”);

14 4. § 13–225 of this article (“Retainage”);

15 **5. TITLE 13, SUBTITLE 5 OF THIS ARTICLE**
16 **(“ECONOMIC INCLUSION PLAN”);**

17 [5.] **6.** Title 14, Subtitle 3 of this article (“Minority Business
18 Participation”);

19 [6.] **7.** Title 15, Subtitle 1 of this article (“Procurement
20 Contract Administration”);

21 [7.] **8.** § 15–226 of this article (“Policy established; timing of
22 payments; notice upon nonpayment; disputes; appeals”); and

23 [8.] **9.** Title 16 of this article (“Suspension and Debarment of
24 Contractors”).

25 (ii) If a procurement violates the provisions of this subsection or
26 policies adopted in accordance with this subsection, the procurement contract is void
27 or voidable in accordance with the provisions of § 11–204 of this subtitle.

28 (6) (i) The State Board of Contract Appeals shall have authority
29 over contract claims related to procurement contracts awarded by:

30 1. the University System of Maryland before July 1,
31 1999; and

1 1. services of managers to invest, in accordance with the
2 management and investment policies adopted by the Board of Regents of the
3 University System of Maryland, gift and endowment assets received by the University
4 System of Maryland in accordance with § 12–104(e) of the Education Article; or

5 2. expenditures to manage, maintain, and enhance, in
6 accordance with the management and investment policies adopted by the Board of
7 Regents of the University System of Maryland, the value of gift and endowment assets
8 received by the University System of Maryland in accordance with § 12–104(e) of the
9 Education Article.

10 13–104.

11 (a) Competitive sealed proposals may be used if:

12 (1) the procurement is for human, social, cultural, or educational
13 services **OR FOR A CONSTRUCTION CONTRACT AS PROVIDED FOR UNDER**
14 **SUBTITLE 5 OF THIS TITLE;**

15 (2) with the approval of the head of a unit, the procurement officer
16 determines that specifications cannot be prepared that allow an award based on the
17 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
18 11–202(3) of this article, the bid most favorable to the State; or

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

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

23 (ii) the use of competitive sealed bidding for that procurement
24 contract is not practicable or not advantageous to the State.

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

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

28 (i) the scope of the procurement contract, including the
29 expected degree of minority business enterprise participation, as provided in §
30 14–303(b) of this article;

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

33 (iii) the relative importance of each factor.

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

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

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

6 (ii) ensure full understanding of:

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

9 2. the proposal submitted by the offeror.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) until July 1, 2006, in the Contract Weekly and in eMaryland
12 Marketplace; and

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

14 **SUBTITLE 5. COMPETITIVE SEALED PROPOSALS FOR CONSTRUCTION**
15 **CONTRACTS.**

16 **13-501.**

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

19 (B) "LOCAL" MEANS THE COUNTY IN WHICH THE WORK THAT IS THE
20 SUBJECT OF A PROCUREMENT IS TO BE PERFORMED.

21 (C) "LOCALLY" MEANS, IF THE WORK THAT IS THE SUBJECT OF A
22 PROCUREMENT IS TO BE PERFORMED WITHIN 2 OR MORE COUNTIES, ALL
23 COUNTIES IN WHICH THE WORK IS TO BE PERFORMED.

24 (D) "LOCALLY OWNED BUSINESS" MEANS A BUSINESS LOCATED IN THE
25 COUNTY WHERE THE WORK THAT IS THE SUBJECT OF A PROCUREMENT IS TO BE
26 PERFORMED.

27 (E) "LOCAL RESIDENT" MEANS A RESIDENT THAT RESIDES IN THE
28 COUNTY WHERE THE WORK THAT IS THE SUBJECT OF A PROCUREMENT IS TO BE
29 PERFORMED.

30 **13-502.**

1 (A) COMPETITIVE SEALED PROPOSALS MAY BE USED FOR A
2 PROCUREMENT FOR A CONSTRUCTION CONTRACT THAT IS:

3 (1) FOR A STATE PUBLIC WORKS PROJECT;

4 (2) REASONABLY ESTIMATED TO BE VALUED AT \$25,000,000 OR
5 MORE; AND

6 (3) APPROPRIATED BETWEEN OCTOBER 1, 2013, AND
7 SEPTEMBER 30, 2015.

8 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A
9 PROCUREMENT FOR A CONSTRUCTION CONTRACT USING COMPETITIVE SEALED
10 PROPOSALS SHALL COMPLY WITH § 13-104 OF THIS TITLE.

11 (C) NOTWITHSTANDING ANY PROVISION OF THIS SUBTITLE, AN
12 OFFEROR OR CONTRACTOR SHALL MAKE A GOOD-FAITH EFFORT TO ACHIEVE
13 MINORITY BUSINESS ENTERPRISE GOALS ESTABLISHED IN ACCORDANCE WITH
14 §14-302 OF THIS ARTICLE.

15 (D) PROVIDED THAT A REQUIREMENT FOR AN ECONOMIC INCLUSION
16 PLAN DOES NOT CONFLICT WITH A FEDERAL LAW OR GRANT, A REQUEST FOR
17 PROPOSALS SHALL:

18 (1) INCLUDE A STATEMENT REQUIRING THAT AN ECONOMIC
19 INCLUSION PLAN BE SUBMITTED WITH A PROPOSAL; AND

20 (2) IDENTIFY THE COUNTIES THAT WILL BE USED TO EVALUATE
21 THE ECONOMIC INCLUSION PLAN REGARDING LOCALLY OWNED BUSINESSES,
22 LOCAL RESIDENTS, LOCAL SKILLED LABORERS, AND LOCAL COMMUNITY
23 GROUPS.

24 (E) IN ACCORDANCE WITH § 13-104(D) OF THIS TITLE, A UNIT MAY
25 CONDUCT A DISCUSSION WITH AN OFFEROR TO ENSURE FULL UNDERSTANDING
26 OF:

27 (1) THE REQUIREMENTS OF THE STATE FOR THE ECONOMIC
28 INCLUSION PLAN AS SET FORTH IN THE REQUEST FOR PROPOSALS; AND

29 (2) THE ECONOMIC INCLUSION PLAN SUBMITTED BY THE
30 OFFEROR.

31 13-503.

1 **(A) AN ECONOMIC INCLUSION PLAN SHALL:**

2 **(1) BE PREPARED BY AN OFFEROR AND SUBMITTED TO A UNIT**
3 **WITH A PROPOSAL THAT RESPONDS TO A REQUEST FOR PROPOSALS; AND**

4 **(2) TO THE EXTENT PRACTICABLE, PROMOTE:**

5 **(I) THE INVOLVEMENT OF LOCALLY OWNED BUSINESSES;**
6 **AND**

7 **(II) THE TRAINING AND EMPLOYMENT OF LOCAL**
8 **RESIDENTS.**

9 **(B) AN ECONOMIC INCLUSION PLAN SHALL INCLUDE:**

10 **(1) PROCEDURES FOR MONITORING AND PROVIDING OVERSIGHT**
11 **OF THE ECONOMIC INCLUSION PLAN;**

12 **(2) GOALS FOR PARTICIPATION OF LOCALLY OWNED BUSINESSES**
13 **AS MEASURED BY THE PRICE PERCENTAGE OF PARTICIPATION TO THE TOTAL**
14 **DOLLAR VALUE OF THE CONTRACT;**

15 **(3) GOALS FOR PARTICIPATION OF LOCAL RESIDENTS AS**
16 **MEASURED BY THE PRICE PERCENTAGE OF PARTICIPATION TO THE TOTAL**
17 **DOLLAR VALUE OF THE CONTRACT;**

18 **(4) A PROCESS FOR:**

19 **(I) ASSESSING LOCAL RESIDENTS AND PROVIDING THEM**
20 **WITH JOB-READINESS SKILLS, INDUSTRY-SPECIFIC CUSTOMIZED TRAINING,**
21 **CAREER COACHING, JOB PLACEMENT, AND JOB RETENTION SERVICES; AND**

22 **(II) ENCOURAGING LOCAL SKILLED LABORERS TO SEEK**
23 **EMPLOYMENT OPPORTUNITIES;**

24 **(5) PROCEDURES FOR IMPLEMENTING THE ECONOMIC**
25 **INCLUSION PLAN; AND**

26 **(6) ANY OTHER INFORMATION THE OFFEROR DETERMINES MAY:**

27 **(I) PROMOTE THE INVOLVEMENT OF LOCALLY OWNED**
28 **BUSINESSES; AND**

1 (II) PROMOTE THE TRAINING AND EMPLOYMENT OF LOCAL
2 RESIDENTS.

3 13-504.

4 A UNIT MAY WAIVE THE REQUIREMENTS OF §§ 13-502 AND 13-503 OF
5 THIS SUBTITLE IF:

6 (1) THE PROCUREMENT MEETS THE REQUIREMENTS FOR AN
7 EMERGENCY CONTRACT ESTABLISHED UNDER § 13-108 OF THIS TITLE; OR

8 (2) THE UNIT DETERMINES THAT IT IS IN THE BEST INTEREST OF
9 THE STATE TO WAIVE THE REQUIREMENTS OF THIS SUBTITLE.

10 13-505.

11 WHEN EVALUATING AN ECONOMIC INCLUSION PLAN, A UNIT SHALL
12 CONSIDER:

13 (1) THE INTENT OF THE OFFEROR TO UTILIZE GOODS AND
14 SERVICES FROM LOCALLY OWNED BUSINESSES, SUBCONTRACTORS, SUPPLIERS,
15 AND JOINT VENTURE PARTNERS;

16 (2) THE NUMBER OF NEW JOBS GENERATED FOR STATE
17 RESIDENTS;

18 (3) THE TRAINING OF LOCAL RESIDENTS; AND

19 (4) THE EMPLOYMENT OF LOCAL RESIDENTS.

20 13-506.

21 (A) A CONTRACTOR SHALL CARRY OUT THE REQUIREMENTS AND GOALS
22 OF AN ECONOMIC INCLUSION PLAN THAT IS SUBMITTED WITH A PROPOSAL AND
23 APPROVED BY A UNIT.

24 (B) A UNIT MAY WAIVE THE REQUIREMENTS AND GOALS OF AN
25 ECONOMIC INCLUSION PLAN IF THE CONTRACTOR PROVIDES A REASONABLE
26 DEMONSTRATION OF GOOD-FAITH EFFORT TO ACHIEVE THE REQUIREMENTS
27 AND GOALS.

1 **(C) AN INDEPENDENT THIRD-PARTY CONTRACTOR THAT IS SELECTED**
2 **BY THE UNIT AND PAID FOR BY THE CONTRACTOR SHALL MAKE A FINDING ON**
3 **WHETHER THE OFFEROR IS IN COMPLIANCE WITH THE REQUIREMENTS AND**
4 **GOALS OF THE ECONOMIC INCLUSION PLAN.**

5 **(D) IF A UNIT FINDS THAT AN OFFEROR IS NOT IN COMPLIANCE WITH AN**
6 **ECONOMIC INCLUSION PLAN, THE FOLLOWING ACTIONS MAY OCCUR:**

7 **(1) THE CONTRACT MAY BE DETERMINED VOID OR VOIDABLE;**

8 **(2) THE UNIT MAY ISSUE A NOTICE TO THE CONTRACTOR THAT**
9 **STATES THE NUMBER OF CALENDAR DAYS THE CONTRACTOR HAS TO:**

10 **(I) COMPLY WITH THE ECONOMIC INCLUSION PLAN; OR**

11 **(II) SUBMIT TO AND HAVE APPROVED BY THE UNIT A**
12 **SCHEDULE FOR BECOMING COMPLIANT WITH THE ECONOMIC INCLUSION PLAN;**

13 **(3) THE CONTRACT MAY BE TERMINATED BY DEFAULT OF THE**
14 **CONTRACTOR;**

15 **(4) LIQUIDATED DAMAGES MAY BE ASSESSED AGAINST THE**
16 **CONTRACTOR IN ACCORDANCE WITH THE CONTRACT; OR**

17 **(5) PENALTIES MAY BE IMPOSED AS OTHERWISE PROVIDED BY**
18 **LAW.**

19 **13-507.**

20 **THE BOARD SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS**
21 **OF THIS SUBTITLE.**

22 **13-508.**

23 **ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD SHALL REPORT**
24 **TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS**
25 **COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS**
26 **COMMITTEE, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**
27 **ARTICLE, ON THE NUMBER OF PROCUREMENTS FOR CONSTRUCTION AWARDED**
28 **IN ACCORDANCE WITH THIS SUBTITLE AND THE NUMBER OF WAIVERS ISSUED IN**
29 **ACCORDANCE WITH §§ 13-504 AND 13-506(B) OF THIS SUBTITLE.**

30 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
31 **October 1, 2013. It shall remain effective for a period of 3 years and, at the end of**

1 September 30, 2016, with no further action required by the General Assembly, this Act
2 shall be abrogated and of no further force and effect.