

SENATE BILL 438

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2001 Regular Session
(11r1632)

ENROLLED BILL
-- Economic and Environmental Affairs/Appropriations --

Introduced by **Senators Haines, McCabe, and Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Elementary and Secondary Education - Procurement - Competition**

3 FOR the purpose of requiring county boards of education to draft certain
4 specifications ~~to obtain maximum competition~~ in certain public school
5 procurement contracts; ~~and prohibiting specifications favoring a single~~
6 ~~prospective bidder or offeror, with the exception of specification of brand name~~
7 ~~products for heating and cooling products or electrical systems~~ requiring that
8 brand name specifications allow substitution of equivalent products except in
9 certain circumstances; and generally relating to competition for certain public
10 school procurement contracts.

11 BY repealing and reenacting, with amendments,
12 Article - Education
13 Section 5-112
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2000 Supplement)

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

3 **Article - Education**

4 5-112.

5 (a) This section does not apply to:

6 (1) Contracts for the purchase of books and other materials of instruction
7 as defined in the State Department of Education Financial Reporting Manual; and

8 (2) Emergency repairs.

9 (b) (1) If the cost of any school building, improvement, supplies, or
10 equipment is more than \$15,000, the county board, at least 2 weeks before bids are to
11 be filed, shall advertise for bids in at least one newspaper of general circulation in the
12 county.

13 ~~(2) THE COUNTY BOARD:~~

14 ~~(I) SHALL DRAFT SPECIFICATIONS TO OBTAIN MAXIMUM~~
15 ~~PRACTICABLE COMPETITION FOR CONTRACTS FOR SCHOOL BUILDING,~~
16 ~~IMPROVEMENT, SUPPLIES, OR EQUIPMENT WITHOUT MODIFYING THE~~
17 ~~REQUIREMENTS OF THE COUNTY BOARD;~~

18 ~~(II) MAY NOT DRAFT THE SPECIFICATIONS IN A MANNER TO FAVOR~~
19 ~~A SINGLE PROSPECTIVE BIDDER OR OFFEROR; BUT~~

20 ~~(III) [The county board may] MAY name in the specifications and~~
21 ~~advertisements for bids the particular make, kind, or brand of article to be contracted~~
22 ~~for or purchased FOR THE PROCUREMENT OF HEATING AND COOLING PRODUCTS OR~~
23 ~~ELECTRICAL SYSTEMS.~~

24 (2) (I) THE COUNTY BOARD SHALL DRAFT SPECIFICATIONS THAT
25 PROVIDE A CLEAR AND ACCURATE DESCRIPTION OF THE FUNCTIONAL
26 CHARACTERISTICS OR THE NATURE OF AN ITEM TO BE PROCURED, WITHOUT
27 MODIFYING THE COUNTY BOARD'S REQUIREMENTS.

28 (II) THE SPECIFICATIONS MAY:

29 1. INCLUDE A STATEMENT OF ANY OF THE COUNTY BOARD'S
30 REQUIREMENTS; AND

31 2. PROVIDE FOR THE SUBMISSION OF SAMPLES,
32 INSPECTION, OR TESTING OF THE ITEM BEFORE PROCUREMENT.

33 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
34 SUBSECTION, SPECIFICATIONS THAT USE ONE OR MORE MANUFACTURER'S
35 PRODUCT TO DESCRIBE THE STANDARD OF QUALITY, PERFORMANCE, OR OTHER

1 CHARACTERISTICS NEEDED TO MEET THE COUNTY BOARD'S REQUIREMENTS, MUST
 2 ALLOW FOR THE SUBMISSION OF EQUIVALENT PRODUCTS.

3 (II) SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY IF
 4 THE COUNTY BOARD DETERMINES IN THE WRITTEN SPECIFICATION THAT:

5 1. A PARTICULAR MANUFACTURER'S PRODUCT IS REQUIRED
 6 TO MAINTAIN COMPATIBILITY OF SERVICE OR EQUIPMENT;

7 2. A PARTICULAR MANUFACTURER'S PRODUCT IS REQUIRED
 8 TO MEET THE HEALTH NEEDS OF STUDENTS;

9 3. REPLACEMENT PARTS OR MAINTENANCE ARE A
 10 PARAMOUNT CONSIDERATION; OR

11 4. A PRODUCT IS PURCHASED FOR RESALE.

12 (c) (1) A contract for the school building, improvements, supplies, or other
 13 equipment shall be awarded to the lowest responsible bidder who conforms to
 14 specifications with consideration given to:

15 (i) The quantities involved;

16 (ii) The time required for delivery;

17 (iii) The purpose for which required;

18 (iv) The competency and responsibility of the bidder;

19 (v) The ability of the bidder to perform satisfactory service; and

20 (vi) The plan for utilization of minority contractors.

21 (2) The county board may reject any and all bids and readvertise for
 22 other bids.

23 (d) (1) In this subsection, the term "minority business enterprise" has the
 24 meaning stated in § 14-301 of the State Finance and Procurement Article.

25 (2) In Montgomery County, by resolution and by implementing
 26 regulations, the Montgomery County Board of Education shall establish a minority
 27 business utilization program to facilitate the participation of responsible certified
 28 minority business enterprises in contracts awarded by the Montgomery County Board
 29 of Education in accordance with competitive bidding procedures.

30 (e) A contract entered into or purchase made in violation of this section is void.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 32 October 1, 2001.

