
By: **Senator Stone**
Introduced and read first time: February 2, 2001
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - University System of Maryland - Construction Contracts -**
3 **Applicability of Retainage and Prompt Payment Requirements**

4 FOR the purpose of making applicable to the University System of Maryland certain
5 provisions limiting and regulating the retainage that may be specified in a
6 procurement contract for construction under certain circumstances; making
7 applicable to the University System of Maryland certain provisions relating to
8 the prompt payment of subcontractors at any tier; providing for the application
9 of this Act; and generally relating to the University System of Maryland
10 procurement contracts for construction and prompt payment and retainage
11 issues.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 11-203(e)
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 2000 Supplement)

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

19 **Article - State Finance and Procurement**

20 11-203.

21 (e) (1) (i) In this subsection the following words have the meanings
22 indicated.

23 (ii) "Board of Regents" means the Board of Regents of the
24 University System of Maryland.

25 (iii) "University" means the University System of Maryland.

26 (2) Except as otherwise provided in this subsection, this Division II does
27 not apply to the University System of Maryland.

1 (3) (i) A procurement by the University shall comply with the policies
2 and procedures developed by the University and approved by the Board of Public
3 Works and the Administrative, Executive, and Legislative Review Committee of the
4 General Assembly in accordance with § 12-112 of the Education Article.

5 (ii) 1. Any contract for services or capital improvements with a
6 value that exceeds \$500,000 shall require the review and approval of the Board of
7 Public Works.

8 2. In its review of a contract for services or capital
9 improvements with a value that exceeds \$500,000 the Board of Public Works may
10 request the comments of the appropriate agencies, including the Department of
11 Budget and Management and the Department of General Services.

12 (4) The University's policies shall:

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

15 (ii) promote the purposes of the regulations adopted by the
16 Department of General Services governing the procurement of architectural and
17 engineering services.

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

20 1. § 11-205 of this subtitle ("Fraud in procurement");

21 2. § 11-205.1 of this subtitle ("Falsification of material
22 facts");

23 3. § 13-219 of this article ("Required clauses -
24 Nondiscrimination clause");

25 4. § 13-225 OF THIS ARTICLE ("RETAINAGE");

26 [4.] 5. Title 14, Subtitle 3 of this article ("Minority Business
27 Participation");

28 [5.] 6. Title 15, Subtitle 1 of this article ("Procurement
29 Contract Administration"); [and]

30 7. § 15-226 OF THIS ARTICLE ("POLICY ESTABLISHED; TIMING
31 OF PAYMENTS; NOTICE UPON NONPAYMENT; DISPUTES; APPEALS"); AND

32 [6.] 8. Title 16 of this article ("Debarment of Contractors").

33 (ii) If a procurement violates the provisions of this subsection or
34 policies adopted in accordance with this subsection, the procurement contract is void
35 or voidable in accordance with the provisions of § 11-204 of this subtitle.

1 (6) (i) The State Board of Contract Appeals shall have authority over
2 contract claims related to procurement contracts awarded by the University before
3 July 1, 1999.

4 (ii) At the election of the Board of Regents and subject to the
5 approval of the Board of Public Works, the State Board of Contract Appeals shall have
6 authority over contract claims related to procurement contracts awarded by the
7 University after June 30, 1999.

8 (7) Paragraphs (3), (4), and (5) of this subsection do not apply to:

9 (i) procurement by the University from:

- 10 1. another unit;
- 11 2. a political subdivision of the State;
- 12 3. an agency of a political subdivision of the State;
- 13 4. a government, including the government of another state,
14 of the United States, or of another country;
- 15 5. an agency or political subdivision of a government; or
- 16 6. a bistate, multistate, bicounty, or multicounty
17 governmental agency; or

18 (ii) procurement by the University in support of enterprise
19 activities for the purpose of:

- 20 1. direct resale;
- 21 2. remanufacture and subsequent resale; or
- 22 3. procurement by the University for overseas programs.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
24 construed only prospectively and may not be applied or interpreted to have any effect
25 on or application to any contracts entered into before the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2001.