

SENATE BILL 86

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P2

2002 Regular Session
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(PRE-FILED)

By: **Chairman, Education, Health, and Environmental Affairs**
(Departmental - General Services)

Requested: November 14, 2001

Introduced and read first time: January 9, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement - Auction Bids**

3 FOR the purpose of authorizing an auction bid as a method for the procurement of
4 supplies by certain State procurement units under certain circumstances;
5 establishing procedures for conducting procurements and awarding
6 procurement contracts by the use of an invitation for auction bids; and generally
7 relating to auction bids for the procurement of supplies by State procurement
8 units.

9 BY repealing and reenacting, with amendments,
10 Article - State Finance and Procurement
11 Section 13-102(a)
12 Annotated Code of Maryland
13 (2001 Replacement Volume)

14 BY adding to
15 Article - State Finance and Procurement
16 Section 13-111
17 Annotated Code of Maryland
18 (2001 Replacement Volume)

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

21 **Article - State Finance and Procurement**

22 13-102.

23 (a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all
24 procurement by units shall be by competitive sealed bids unless one of the following
25 methods specifically is authorized:

- 1 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
2 subtitle;
- 3 (2) noncompetitive negotiation under § 13-106 of this subtitle;
- 4 (3) sole source procurement under § 13-107 of this subtitle;
- 5 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 6 (5) small procurement under § 13-109 of this subtitle; [or]
- 7 (6) an intergovernmental cooperative purchasing agreement under §
8 13-110 of this subtitle; OR
- 9 (7) AUCTION BIDS UNDER § 13-111 OF THIS SUBTITLE.
- 10 13-111.

11 (A) THIS SECTION APPLIES TO THE PROCUREMENT OF SUPPLIES WITHIN THE
12 AUTHORITY OF A PRIMARY PROCUREMENT UNIT.

13 (B) (1) WHENEVER THE HEAD OF A PRIMARY PROCUREMENT UNIT OR
14 DESIGNEE DETERMINES THAT IN THE BEST INTEREST OF THE STATE A
15 PROCUREMENT CONTRACT SHOULD BE BASED ON AUCTION BIDS, A PROCUREMENT
16 OFFICER SHALL SEEK BIDS BY ISSUING AN INVITATION FOR AUCTION BIDS.

17 (2) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN INVITATION FOR
18 AUCTION BIDS SHALL INCLUDE:

19 (I) THE SPECIFICATIONS OF THE PROCUREMENT CONTRACT;

20 (II) WHETHER THE PROCUREMENT CONTRACT WILL BE AWARDED
21 BASED ON THE LOWEST BID PRICE OR THE LOWEST EVALUATED BID PRICE;

22 (III) IF THE PROCUREMENT CONTRACT WILL BE BASED ON
23 EVALUATED BID PRICE, THE OBJECTIVE MEASURABLE CRITERIA BY WHICH THE
24 LOWEST EVALUATED BID PRICE WILL BE DETERMINED;

25 (IV) THE SMALL BUSINESS PREFERENCE, IF DESIGNATED UNDER §
26 13-103 OF THIS SUBTITLE; AND

27 (V) THE DATE AND TIME WHEN BIDDING WILL COMMENCE AND
28 THE DATE AND TIME WHEN BIDDING WILL END OR THE EVENT UPON WHICH
29 BIDDING WILL END.

30 (C) (1) IN THE DISCRETION OF THE PROCUREMENT OFFICER, THE
31 INVITATION FOR AUCTION BIDS MAY:

32 (I) INCLUDE A REQUEST FOR UNPRICED TECHNICAL OFFERS OR
33 SAMPLES;

1 (II) DIRECT BIDDERS TO SUBMIT PRICE BIDS AFTER THE UNIT
2 EVALUATES THE TECHNICAL OFFERS OR SAMPLES AND FINDS THEY ARE
3 ACCEPTABLE UNDER THE CRITERIA SET FORTH IN THE INVITATION FOR AUCTION
4 BIDS; AND

5 (III) INFORM ALL BIDDERS WHO SUBMITTED TECHNICAL OFFERS
6 OR SAMPLES OF THE IDENTITY OF EACH BIDDER WHO SUBMITTED AN ACCEPTABLE
7 TECHNICAL OFFER OR SAMPLE.

8 (2) PRICE BIDS MAY NOT BE RECEIVED UNTIL AFTER THE UNIT HAS
9 COMPLETED EVALUATION OF THE TECHNICAL OFFERS OR SAMPLES.

10 (3) A PRICE BID MAY NOT BE RECEIVED AT ANY TIME IF THE BID IS
11 SUBMITTED BY A BIDDER WHOSE TECHNICAL OFFER OR SAMPLE HAS BEEN
12 EVALUATED AS UNACCEPTABLE TO THE UNIT.

13 (D) A UNIT SHALL GIVE PUBLIC NOTICE OF AN INVITATION FOR AUCTION BIDS
14 IN THE SAME MANNER AS REQUIRED FOR AN INVITATION FOR BIDS.

15 (E) (1) (I) MULTIPLE PRICE BIDS ARE PERMITTED IN RESPONSE TO AN
16 INVITATION FOR AUCTION BIDS.

17 (II) WHEN A BIDDER SUBMITS MULTIPLE BIDS, EACH BID SHALL BE
18 JUDGED INDEPENDENTLY AND SHALL NOT REVOKE PREVIOUS BIDS OF THAT
19 BIDDER.

20 (2) A PROCUREMENT OFFICER SHALL:

21 (I) RECEIVE BIDS IN PUBLIC AT THE TIME AND PLACE
22 DESIGNATED IN THE INVITATION FOR AUCTION BIDS; AND

23 (II) RECORD AND POST THE AMOUNT OF EACH BID AT THE TIME IT
24 IS RECEIVED.

25 (3) (I) THE AMOUNT OF A PRICE BID SHALL BE AVAILABLE FOR
26 PUBLIC INSPECTION FROM THE TIME IT IS RECEIVED.

27 (II) THE IDENTITY OF THE BIDDER SUBMITTING A PRICE BID SHALL
28 NOT BE AVAILABLE FOR PUBLIC INSPECTION UNTIL BIDDING HAS ENDED.

29 (4) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, A BID
30 IS IRREVOCABLE, AFTER RECEIPT, FOR THE PERIOD SPECIFIED IN THE INVITATION
31 FOR AUCTION BIDS.

32 (5) A PROCUREMENT OFFICER MAY ALLOW A BIDDER TO CORRECT OR
33 WITHDRAW A BID IF CORRECTION OR WITHDRAWAL IS:

34 (I) ALLOWED UNDER REGULATIONS ADOPTED UNDER THIS
35 DIVISION II APPLICABLE TO AN INVITATION FOR BIDS; AND

1 (II) APPROVED IN WRITING BY THE OFFICE OF THE ATTORNEY
2 GENERAL.

3 (F) (1) AFTER OBTAINING ANY APPROVAL REQUIRED BY LAW, THE
4 PROCUREMENT OFFICER SHALL AWARD THE PROCUREMENT CONTRACT TO THE
5 RESPONSIBLE BIDDER WHO SUBMITS THE RESPONSIVE BID THAT:

6 (I) IS THE LOWEST BID PRICE; OR

7 (II) IF THE INVITATION FOR AUCTION BIDS SO PROVIDES, IS THE
8 LOWEST EVALUATED BID PRICE.

9 (2) IF, AFTER BIDS HAVE BEEN RECEIVED, A PROCUREMENT OFFICER
10 DETERMINES THAT ONLY ONE RESPONSIBLE BIDDER HAS SUBMITTED A
11 RESPONSIVE BID, THE UNIT MAY NEGOTIATE THE PROCUREMENT CONTRACT WITH
12 THAT ONE BIDDER UNDER THE PROCEDURE FOR SOLE SOURCE PROCUREMENT.

13 (3) (I) AFTER BIDS HAVE BEEN RECEIVED, A PROCUREMENT OFFICER
14 MAY AWARD A PROCUREMENT CONTRACT ON THE BASIS OF REVISED BIDS IF:

15 1. ALL BIDS ARE REJECTED UNDER § 13-206(B) OF THIS
16 TITLE;

17 2. ALL BID PRICES EXCEED THE FUNDS AVAILABLE FOR THE
18 PROCUREMENT; OR

19 3. WITH THE APPROVAL OF THE HEAD OF A PRIMARY
20 PROCUREMENT UNIT OR A DESIGNEE, THE PROCUREMENT OFFICER DETERMINES
21 THAT ALL BIDS ARE UNREASONABLE AS TO AT LEAST ONE REQUIREMENT AND THE
22 DELAY THAT WOULD RESULT FROM ISSUING A NEW INVITATION FOR AUCTION BIDS
23 WITH REVISED SPECIFICATIONS OR QUANTITIES WOULD BE FISCALLY
24 DISADVANTAGEOUS OR OTHERWISE NOT IN THE BEST INTERESTS OF THE STATE.

25 (II) IF THERE IS MORE THAN ONE BIDDER, DISCUSSIONS ABOUT
26 REVISED SPECIFICATIONS OR QUANTITIES SHALL BE CONDUCTED WITH ALL
27 RESPONSIBLE BIDDERS WHO SUBMITTED RESPONSIVE BIDS. THE BIDDERS SHALL BE
28 TREATED FAIRLY AND EQUALLY WITH RESPECT TO ANY DISCUSSIONS.

29 (III) AS PROMPTLY AS POSSIBLE, THE PROCUREMENT OFFICER
30 SHALL:

31 1. ISSUE AN INVITATION FOR REVISED AUCTION BIDS,
32 WHICH SHALL STATE WHETHER THE AWARD WILL BE MADE WITHOUT COMPETITIVE
33 NEGOTIATIONS; AND

34 2. REQUIRE A PROMPT RESPONSE TO THAT INVITATION.

35 (IV) AN INVITATION FOR REVISED AUCTION BIDS IS NOT SUBJECT
36 TO THE NOTICE REQUIREMENTS IN SUBSECTION (D) OF THIS SECTION.

1 (V) AFTER REVISED BIDS HAVE BEEN SUBMITTED, NEGOTIATIONS
2 WITH BIDDERS MAY NOT BE CONDUCTED UNLESS THE PROCUREMENT OFFICER
3 DETERMINES THAT THERE IS A COMPELLING REASON TO NEGOTIATE.

4 (VI) AFTER REVISED BIDS HAVE BEEN RECEIVED AND ANY
5 APPROVAL REQUIRED BY LAW HAS BEEN OBTAINED, THE PROCUREMENT OFFICER
6 SHALL AWARD THE PROCUREMENT CONTRACT TO THE RESPONSIBLE BIDDER WHO
7 SUBMITS A RESPONSIVE BID THAT:

8 1. IS THE LOWEST BID PRICE; OR

9 2. IF THE INVITATION FOR REVISED BIDS SO PROVIDES, IS
10 THE LOWEST EVALUATED BID PRICE.

11 (G) NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A
12 PROCUREMENT CONTRACT IN EXCESS OF \$25,000 AWARDED UNDER THIS SECTION,
13 OR A LOWER AMOUNT SET BY THE BOARD BY REGULATION IN ACCORDANCE WITH
14 TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, A UNIT SHALL PUBLISH
15 IN THE CONTRACT WEEKLY NOTICE OF THE AWARD.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
17 effect July 1, 2002.