

SENATE BILL 86

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(PRE-FILED)

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

Requested: November 14, 2001
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Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 11, 2002

CHAPTER _____

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, with a certain minimum estimated contract value, by certain State
5 procurement units under certain circumstances; requiring a procurement officer
6 to seek bids by issuing an invitation for auction bids under certain
7 circumstances; establishing procedures for conducting procurements and
8 awarding procurement contracts by the use of an invitation for auction bids or
9 revised auction bids, under certain circumstances; requiring certain notice of
10 certain awards; and generally relating to auction bids for the procurement of
11 supplies by State procurement units.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 13-102(a)
15 Annotated Code of Maryland
16 (2001 Replacement Volume)

17 BY adding to
18 Article - State Finance and Procurement
19 Section 13-111
20 Annotated Code of Maryland
21 (2001 Replacement Volume)

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

3 **Article - State Finance and Procurement**

4 13-102.

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

8 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
9 subtitle;

10 (2) noncompetitive negotiation under § 13-106 of this subtitle;

11 (3) sole source procurement under § 13-107 of this subtitle;

12 (4) emergency or expedited procurement under § 13-108 of this subtitle;

13 (5) small procurement under § 13-109 of this subtitle; [or]

14 (6) an intergovernmental cooperative purchasing agreement under §
15 13-110 of this subtitle; OR

16 (7) AUCTION BIDS UNDER § 13-111 OF THIS SUBTITLE.

17 13-111.

18 (A) THIS SECTION APPLIES TO THE PROCUREMENT OF SUPPLIES ~~WITHIN THE~~
19 ~~AUTHORITY OF, WITH AN ESTIMATED CONTRACT VALUE OF \$1,000,000 OR MORE, BY A~~
20 PRIMARY PROCUREMENT UNIT.

21 (B) (1) WHENEVER THE HEAD OF A PRIMARY PROCUREMENT UNIT OR
22 DESIGNEE DETERMINES THAT IT IS IN THE BEST INTEREST OF THE STATE FOR A
23 PROCUREMENT CONTRACT ~~SHOULD~~ TO BE BASED ON AUCTION BIDS, A
24 PROCUREMENT OFFICER SHALL SEEK BIDS BY ISSUING AN INVITATION FOR
25 AUCTION BIDS.

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

28 (I) THE SPECIFICATIONS OF THE PROCUREMENT CONTRACT;

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

31 (III) IF THE PROCUREMENT CONTRACT WILL BE BASED ON
32 EVALUATED BID PRICE, THE OBJECTIVE MEASURABLE CRITERIA BY WHICH THE
33 LOWEST EVALUATED BID PRICE WILL BE DETERMINED;

1 (IV) THE SMALL BUSINESS PREFERENCE, IF DESIGNATED UNDER §
2 13-103 OF THIS SUBTITLE; AND

3 (V) THE DATE AND TIME WHEN BIDDING WILL COMMENCE AND
4 THE DATE AND TIME WHEN BIDDING WILL END OR THE EVENT UPON WHICH
5 BIDDING WILL END.

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

8 (I) INCLUDE A REQUEST FOR UNPRICED TECHNICAL OFFERS OR
9 SAMPLES;

10 (II) DIRECT BIDDERS TO SUBMIT PRICE BIDS AFTER THE UNIT
11 EVALUATES THE TECHNICAL OFFERS OR SAMPLES AND FINDS THEY ARE
12 ACCEPTABLE UNDER THE CRITERIA SET FORTH IN THE INVITATION FOR AUCTION
13 BIDS; AND

14 (III) INFORM ALL BIDDERS WHO SUBMITTED TECHNICAL OFFERS
15 OR SAMPLES OF THE IDENTITY OF EACH BIDDER WHO SUBMITTED AN ACCEPTABLE
16 TECHNICAL OFFER OR SAMPLE.

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

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

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

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

26 (II) WHEN A BIDDER SUBMITS MULTIPLE BIDS, EACH BID SHALL BE
27 JUDGED INDEPENDENTLY AND SHALL NOT REVOKE PREVIOUS BIDS OF THAT
28 BIDDER.

29 (2) A PROCUREMENT OFFICER SHALL:

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

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

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

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

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

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

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

10 (II) APPROVED IN WRITING BY THE OFFICE OF THE ATTORNEY
11 GENERAL.

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

15 (I) IS THE LOWEST BID PRICE; OR

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

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

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

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

26 2. ALL BID PRICES EXCEED THE FUNDS AVAILABLE FOR THE
27 PROCUREMENT; OR

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

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

1 (III) IF ONE OF THE CONDITIONS SET FORTH UNDER
2 SUBPARAGRAPH (I) OF THIS PARAGRAPH EXISTS, AS PROMPTLY AS POSSIBLE, THE
3 PROCUREMENT OFFICER SHALL:

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

7 2. REQUIRE A PROMPT RESPONSE TO THAT INVITATION.

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

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

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

17 1. IS THE LOWEST BID PRICE; OR

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

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

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