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Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Primary Procurement Units - Consolidation of Authority**

3 FOR the purpose of consolidating, in certain State entities, the authority to engage in
4 certain procurement activities under the State procurement law; repealing the
5 authority of certain State entities to engage in certain procurement activities;
6 altering the requirements for the review of certain contracts for certain
7 expenditures prior to their execution; requiring that certain regulations adopted
8 by certain State entities include certain matters; requiring certain State entities
9 to include certain information in certain procurement activity reports; and
10 generally relating to the consolidation of procurement authority under the State
11 procurement law.

12 BY repealing and reenacting, without amendments,
13 Article - State Finance and Procurement
14 Section 11-101(a) and 13-402
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 11-101(l), 12-107, 12-202, 13-204, 13-401, 14-204, 14-208, 14-302,
20 14-303, and 14-305
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2003 Supplement)

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

1 **Article - State Finance and Procurement**

2 11-101.

3 (a) In this Division II the following words have the meanings indicated unless:

4 (1) the context clearly requires a different meaning; or

5 (2) a different definition is provided for a particular title or provision.

6 (l) "Primary procurement units" means:

7 (1) [the State Treasurer;

8 (2) the Department of Budget and Management;

9 (3)] the Department of General Services;

10 [(4)] (2) the Department of Transportation;

11 [(5)] (3) the University System of Maryland; AND

12 [(6) the Maryland Port Commission;

13 (7) the Department of Public Safety and Correctional Services; and

14 (8)] (4) the Morgan State University.

15 12-107.

16 (a) This section does not apply to capital expenditures by the Department of
17 Transportation or the Maryland Transportation Authority, in connection with State
18 roads, bridges, or highways, as provided in § 12-202 of this title.19 (b) Subject to the authority of the Board, jurisdiction over procurement is as
20 follows:21 (1) the [State Treasurer] DEPARTMENT OF GENERAL SERVICES may
22 engage in or control procurement of banking and financial services, insurance, and
23 insurance services, as provided in Division I of this article and Article VI, § 3 of the
24 Maryland Constitution;25 (2) the Department of [Budget and Management] GENERAL SERVICES
26 may control procurement of:27 (i) information processing equipment and associated services, as
28 provided in Title 3, Subtitle 4 of this article;29 (ii) services by a unit, subject to any limitation in this Division II;
30 and

1 (iii) leases of motor vehicles, as provided in Title 3, Subtitle 5 of this
2 article;

3 (3) the Department of General Services may engage in or control
4 procurement of:

5 (i) leases of real property, including leases under Title 4, Subtitle 3
6 of this article;

7 (ii) supplies, including supplies under Title 4, Subtitle 3 of this
8 article, but excluding insurance, information processing equipment, and motor
9 vehicle leases;

10 (iii) construction, including construction under Title 4, Subtitle 4 of
11 this article;

12 (iv) construction related services, including those under Title 4,
13 Subtitle 4 of this article; and

14 (v) architectural or engineering services under Title 13, Subtitle 3
15 of this article;

16 (4) the Department of Transportation [and the Maryland Transportation
17 Authority, without the approval of any of the other primary procurement units,] may
18 engage in the procurement of:

19 (i) construction that is related to transportation, as provided in the
20 Transportation Article;

21 (ii) construction related services that are related to transportation,
22 as provided in the Transportation Article;

23 (iii) architectural or engineering services that are related to
24 transportation, under Title 13, Subtitle 3 of this article;

25 (iv) rolling stock and other property peculiar to the operation of a
26 transit system, as provided in § 7-403 of the Transportation Article;

27 (v) supplies for aeronautics related activities, including motor
28 vehicles and information processing supplies, but excluding:

29 1. supplies funded by the proceeds from State general
30 obligation bonds; and

31 2. insurance; and

32 (vi) services for aeronautics related activities, including information
33 processing services, but excluding banking and financial services under the authority
34 of the State Treasurer under item (1) of this subsection;

1 (5) the [Maryland Port Commission, without the approval of any of the
2 other primary procurement units,] DEPARTMENT OF TRANSPORTATION may engage
3 in the procurement of:

4 (i) supplies for port related activities, including motor vehicles and
5 information processing supplies, but excluding:

6 1. supplies funded by the proceeds from State general
7 obligation bonds; and

8 2. insurance;

9 (ii) services for port related activities, including information
10 processing services, but excluding banking and financial services under the authority
11 of the State Treasurer under item (1) of this subsection;

12 (iii) construction and construction related services for a port facility
13 as defined in § 6-101(e) of the Transportation Article;

14 (iv) port related architectural and engineering services under Title
15 13, Subtitle 3 of this article; and

16 (v) leases of real property for port related activities unless the lease
17 payments are from the General Fund of the State;

18 (6) the Department of [Public Safety and Correctional Services may,
19 without the approval of any of the other primary procurement units] GENERAL
20 SERVICES MAY:

21 (i) engage in the procurement of construction and construction
22 related services for State correctional facilities; and

23 (ii) engage in the procurement of supplies, materials, and
24 equipment in support of construction and construction related services for State
25 correctional facilities in accordance with this Division II and Title 2 and Title 10,
26 Subtitle 1 of the Correctional Services Article; and

27 (7) Morgan State University, without the approval of any of the other
28 primary procurement units, may engage in the procurement of:

29 (i) supplies for the University, including motor vehicles and, to the
30 extent provided by Title 3, Subtitle 4 of this article, information processing supplies,
31 but excluding insurance;

32 (ii) services for the University, including information processing
33 services to the extent provided in Title 3, Subtitle 4 of this article, but excluding
34 banking and financial services under the authority of the State Treasurer under item
35 (1) of this subsection;

1 (iii) construction and construction related services for the
2 University, regardless of the source of funds, to the extent that the Board grants
3 authority over specific projects or classes of projects; and

4 (iv) leases of real property for the University if the lease payments
5 are not paid from the General Fund of the State.

6 12-202.

7 (a) This section does not apply to capital expenditures by the Department of
8 Transportation or the Maryland Transportation Authority, in connection with State
9 roads, bridges, or highways.

10 (b) Before execution, a contract for a capital expenditure other than in
11 connection with [a State correctional facility, St. Mary's College of Maryland, or] the
12 University System of Maryland shall be:

13 (1) reviewed by the Secretary of General Services; and

14 (2) except as provided in § 12-203 of this subtitle and § 13-108 of this
15 article, after that review, approved by the Board.

16 (c) [Before execution, a contract for a capital expenditure in connection with a
17 State correctional facility shall be:

18 (1) reviewed by the Secretary of Public Safety and Correctional Services;
19 and

20 (2) except as provided in § 12-203 of this subtitle, after that review,
21 approved by the Board.

22 (d)] Before execution, a contract for a capital expenditure in connection with
23 the University System of Maryland shall be:

24 (1) subject to the provisions of Title 4, Subtitle 4 of this article;

25 (2) approved by the Board of Regents of the University System of
26 Maryland; and

27 (3) approved by the Board of Public Works.

28 [(e) Before execution, a contract for a capital expenditure in connection with
29 St. Mary's College of Maryland shall be:

30 (1) subject to the provisions of Title 4, Subtitle 4 of this article;

31 (2) approved by the Board of Trustees of St. Mary's College of Maryland;
32 and

33 (3) approved by the Board of Public Works.

1 (f)] (D) The Board shall supervise the expenditure of any money that the
2 General Assembly appropriates for:

- 3 (1) buildings;
- 4 (2) equipment;
- 5 (3) new construction; or
- 6 (4) any other capital expenditure.

7 13-204.

8 (a) (1) By regulation, each of the primary procurement units may provide
9 for the prequalification of persons as prospective responsible bidders or offerors for
10 procurements other than leases of real property.

11 (2) Each of the primary procurement units shall keep a register of all
12 prequalified persons.

13 (3) Persons prequalified as prospective responsible bidders or offerors by
14 a primary procurement unit for procurements of direct or indirect work-related
15 services shall be deemed to be prequalified for the purposes of procurements by the
16 DEPARTMENT OF GENERAL SERVICES ON BEHALF OF THE Department of Human
17 Resources of direct or indirect work-related services to benefit current recipients,
18 former recipients or non-custodial parents of children who are current or former
19 recipients of family investment program benefits.

20 (b) If a primary procurement unit [or the Department of Human Resources]
21 uses a prequalification procedure for awarding a procurement contract:

22 (1) a person who is not prequalified may submit a bid or proposal; and

23 (2) after bid opening or receipt of proposals and before awarding the
24 procurement contract, a procurement officer may determine that:

25 (i) a person who was not prequalified at the time of bid opening or
26 receipt of proposals is a responsible bidder or offeror; or

27 (ii) a prequalified person is not a responsible bidder or offeror.

28 13-401.

29 (a) In this subtitle the following words have the meanings indicated.

30 (b) "Information technology" has the meaning stated in § 3-402 of this article.

31 (c) "Secretary" means the Secretary of [Budget and Management] GENERAL
32 SERVICES.

1 13-402.

2 (a) By regulation, the Secretary shall adopt a streamlined procurement
3 process for procurement of information technology services that provides for the
4 qualification of an offeror in one or more categories of information technology
5 services.

6 (b) The streamlined procurement process adopted by the Secretary shall
7 include:

8 (1) the categories of information technology services in which an offeror
9 may submit a proposal for qualification;

10 (2) a procedure for the consideration and approval of proposals for
11 qualification of an unlimited number of offerors in each category of information
12 technology services;

13 (3) the execution of a standard contract for a specified period of time
14 between the State and an offeror approved for qualification in a category of
15 information technology services;

16 (4) the policies and procedures to be followed by a unit of the Executive
17 Branch in the issuance of a solicitation for a task order for information technology
18 services to a qualified offeror that has executed a contract with the Secretary; and

19 (5) a performance evaluation procedure to be used by a unit of the
20 Executive Branch to evaluate the performance of a qualified offeror that has
21 completed work on a task order.

22 (c) (1) A unit of the Executive Branch that requires information technology
23 services may issue a solicitation for a task order to a qualified offeror in the
24 appropriate category of information technology services consistent with procedures
25 and policies adopted by the Secretary in subsection (b) of this section.

26 (2) The solicitation for a task order shall include a statement of the:

27 (i) factors that will be used in evaluating a qualified offeror's
28 response; and

29 (ii) relative importance of each factor.

30 (d) (1) If the unit of the Executive Branch expects that the total cost of the
31 information technology services will exceed \$100,000, the unit shall issue a
32 solicitation for a task order to all qualified offerors in the appropriate category
33 established by the Secretary.

34 (2) If the unit of the Executive Branch expects that the total cost of the
35 information technology services will be \$100,000 or less, the unit shall issue a
36 solicitation for a task order to a minimum of six qualified offerors or all qualified
37 offerors, whichever is less, in the appropriate category established by the Secretary.

1 (e) After a unit of the Executive Branch receives responses from qualified
2 offerors to a solicitation for a task order, the unit shall evaluate the responses and
3 may select an offeror based on the response that is determined to be the most
4 advantageous to the State considering the evaluation factors set forth in the task
5 order.

6 14-204.

7 The Secretary of General Services, the Secretary of Transportation, and the
8 Chancellor of the University System of Maryland each shall adopt regulations to
9 establish procedures for:

10 (1) compiling and maintaining a comprehensive bidder's list of small
11 businesses;

12 (2) locating potential sources for various construction related services,
13 supplies, and services and affirmatively seeking to locate potential minority business
14 enterprise sources for those construction related services, supplies, and services;

15 (3) helping small businesses to comply with the procedures for bidding
16 on procurement contracts;

17 (4) examining requests for construction related services, supplies, and
18 services to determine when an invitation for bids may be designated for the Small
19 Business Preference Program;

20 (5) bidding for a procurement contract designated for a small business
21 preference;

22 (6) simplifying procurement specifications and terms, to increase the
23 opportunities for small business participation;

24 (7) investigating the responsibility of bidders on small business
25 preferences; [and]

26 (8) explaining to a small business the reason for which its bid for a small
27 business preference was rejected; AND

28 (9) ENCOURAGING IN A STRONG AND DIRECT MANNER SMALL
29 BUSINESSES TO BID ON PROCUREMENT CONTRACTS.

30 14-208.

31 (a) Within 90 days after the end of each fiscal year, the Secretary of General
32 Services, the Secretary of Transportation, and the Chancellor of the University
33 System of Maryland each shall submit a report THAT INCLUDES A DETAILED
34 ANALYSIS on the operation and effectiveness of the Small Business Preference
35 Program to the Board.

1 (b) Within 60 days after receipt of all reports required under subsection (a) of
2 this section, the Board shall compile the information and report on the entire Small
3 Business Preference Program to the Legislative Policy Committee, subject to § 2-1246
4 of the State Government Article.

5 14-302.

6 (a) (1) Except for leases of real property and except as provided in
7 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
8 procedures, consistent with the purposes of this subtitle, to try to achieve the
9 following results:

10 (i) a minimum of 7% of the unit's total dollar value of procurement
11 contracts is to be made directly or indirectly from certified minority business
12 enterprises classified by the certification agency as African American-owned
13 businesses;

14 (ii) a minimum of 10% of the unit's total dollar value of
15 procurement contracts is to be made directly or indirectly from certified minority
16 business enterprises classified by the certification agency as women-owned
17 businesses; and

18 (iii) an overall minimum of 25% of the unit's total dollar value of
19 procurement contracts is to be made directly or indirectly from all certified minority
20 business enterprises.

21 (2) (i) Except as provided in paragraph (3) of this subsection, in
22 procurement for construction, each unit shall structure procurement procedures,
23 consistent with the purposes of this subtitle, to try to achieve the following results:

24 1. a minimum of 7% of the unit's total dollar value of
25 construction contracts is to be made directly or indirectly from certified minority
26 business enterprises classified by the certification agency as African
27 American-owned businesses;

28 2. a minimum of 10% of the unit's total dollar value of
29 construction contracts is to be made directly or indirectly from certified minority
30 business enterprises classified by the certification agency as women-owned
31 businesses; and

32 3. an overall minimum of 25% of the unit's total dollar value
33 of construction contracts is to be made directly or indirectly from all certified minority
34 business enterprises.

35 (ii) The unit shall:

36 1. consider the practical severability of the construction
37 projects; and

1 INCLUDE A SUMMARY OF ITS FINDINGS IN THE REPORT REQUIRED UNDER § 14-305
2 OF THIS SUBTITLE.

3 (7) If, during the performance of a contract, a certified minority business
4 enterprise contractor or subcontractor becomes ineligible to participate in the
5 Minority Business Enterprise Program because one or more of its owners has a
6 personal net worth that exceeds the amount specified in § 14-301(i)(3) of this subtitle:

7 (i) that ineligibility alone may not cause the termination of the
8 certified minority business enterprise's contractual relationship for the remainder of
9 the term of the contract; and

10 (ii) the certified minority business enterprise's participation under
11 the contract shall continue to be counted toward the program and contract goals.

12 (b) (1) The provisions of §§ 14-301(f) and 14-303 of this subtitle and
13 subsection (a) of this section are inapplicable to the extent that any unit determines
14 the provisions to be in conflict with any applicable federal program requirement.

15 (2) The determination under this subsection shall be included with the
16 report required under § 14-305 of this subtitle.

17 14-303.

18 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government
19 Article, the Board shall adopt regulations consistent with the purposes of this
20 Division II to carry out the requirements of this subtitle.

21 (ii) The Board shall keep a record of the number of waivers
22 requested and the number of waivers granted each year under subsection (b)(8) of this
23 section and submit a copy of the record to the General Assembly on or before October
24 1 of each year, in accordance with § 2-1246 of the State Government Article.

25 (2) The regulations shall establish procedures to be followed by units,
26 prospective contractors, and successful bidders or offerors to maximize notice to, and
27 the opportunity to participate in the procurement process by, a broad range of
28 minority business enterprises.

29 (b) These regulations shall include:

30 (1) provisions designating one agency to certify and decertify minority
31 business enterprises for all units through a single process that meets applicable
32 federal requirements;

33 (2) a requirement that the solicitation document accompanying each
34 solicitation set forth the expected degree of minority business enterprise participation
35 based, in part, on:

36 (i) the potential subcontract opportunities available in the prime
37 procurement contract; and

1 (ii) the availability of certified minority business enterprises to
2 respond competitively to the potential subcontract opportunities;

3 (3) a requirement that the unit provide a current list of certified
4 minority business enterprises to each prospective contractor;

5 (4) provisions to ensure the uniformity of requests for bids on
6 subcontracts;

7 (5) provisions relating to the timing of requests for bids on subcontracts
8 and of submission of bids on subcontracts;

9 (6) provisions designed to ensure that a fiscal disadvantage to the State
10 does not result from an inadequate response by minority business enterprises to a
11 request for bids;

12 (7) provisions relating to joint ventures, under which a bidder may count
13 toward meeting its minority business enterprise participation goal, the minority
14 business enterprise portion of the joint venture;

15 (8) consistent with § 14-302(a)(5) of this subtitle, provisions relating to
16 any circumstances under which a unit may waive, FOR GOOD CAUSE, obligations of
17 the contractor relating to minority business enterprise participation;

18 (9) provisions requiring a monthly submission to the unit by minority
19 business enterprises acknowledging all payments received in the preceding 30 days
20 under a contract governed by this subtitle;

21 (10) a requirement that a unit shall verify and maintain data concerning
22 payments received by minority business enterprises, including a requirement that,
23 upon completion of a project, the unit shall compare the total dollar value actually
24 received by minority business enterprises with the amount of contract dollars initially
25 awarded, and an explanation of any discrepancies therein;

26 (11) a requirement that a unit verify that minority business enterprises
27 listed in a successful bid are actually participating to the extent listed in the project
28 for which the bid was submitted;

29 (12) provisions establishing a graduation program based on the financial
30 viability of the minority business enterprise, using annual gross receipts or other
31 economic indicators as may be determined by the Board; and

32 (13) other provisions that the Board considers necessary or appropriate to
33 encourage participation by minority business enterprises and to protect the integrity
34 of the procurement process.

35 (c) The regulations adopted under this section shall specify that a unit may
36 not allow a business to participate as if it were a certified minority business
37 enterprise if the business's certification is pending.

1 14-305.

2 (a) (1) Within 90 days after the end of the fiscal year, each unit shall report
3 to the Governor's Office of Minority Affairs and the certification agency.

4 (2) A report under this subsection shall for the preceding fiscal year:

5 (i) state the total number and value of procurement contracts
6 between the unit and certified minority business enterprises, by specific category of
7 minority business enterprise;

8 (ii) indicate the percentage that those procurement contracts
9 represent, by specific category of minority business enterprise, of the total number
10 and value of procurement contracts; and

11 (iii) contain other such information:

12 1. as required by the Governor's Office of Minority Affairs
13 and the certification agency and approved by the Board; AND

14 2. THAT THE UNIT CONSIDERS IMPORTANT.

15 (3) A report under this subsection shall be in a form prescribed by the
16 Governor's Office of Minority Affairs and the certification agency and approved by the
17 Board.

18 (b) (1) On or before December 31 of each year, the Governor's Office of
19 Minority Affairs shall submit to the Board of Public Works and, subject to § 2-1246 of
20 the State Government Article, to the Legislative Policy Committee a report
21 summarizing the information the Office receives under subsection (a) of this section.

22 (2) This report may be prepared in conjunction with the annual report
23 required under § 9-306 of the State Government Article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2004.