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By: **Senators Brochin, Forehand, Garagiola, and Hollinger**  
Introduced and read first time: January 28, 2004  
Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - High Performance Buildings - Price Preferences**

3 FOR the purpose of establishing certain price preferences for high performance  
4 buildings in the award of certain public contracts by competitive sealed bid or  
5 competitive sealed proposal; creating a certain exception to the requirement  
6 that a procurement officer award public contracts under a competitive sealed  
7 bid procurement to the lowest responsive bid price or evaluated bid price;  
8 requiring a statement of evaluation factors in certain requests for sealed  
9 proposals to include the high performance buildings price preference; defining a  
10 certain term; making certain stylistic changes; and generally relating to price  
11 preferences for high performance buildings in the award of certain public  
12 contracts.

13 BY repealing and reenacting, with amendments,  
14 Article - State Finance and Procurement  
15 Section 13-101, 13-103(e)(1), and 13-104(b) and (f)  
16 Annotated Code of Maryland  
17 (2001 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, without amendments,  
19 Article - State Finance and Procurement  
20 Section 13-102(a), 13-103(a), and 13-104(a)  
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:

25 **Article - State Finance and Procurement**

26 13-101.

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

1 (b) ["Evaluated bid price" means the price of a bid after adjustment in  
2 accordance with objective measurable criteria.

3 (c) (1) "Objective measurable criteria" means standards that enable the  
4 State to compare the economy, effectiveness, or value of the subject of the bids.

5 (2) "Objective measurable criteria" includes standards of reliability,  
6 operational costs, maintainability, useful life, and residual value.

7 (d) "eMaryland Marketplace" means the Internet-based procurement system  
8 managed by the Department of General Services.

9 (e) "Contract Weekly Online" means the Internet-based version of the  
10 Maryland Contract Weekly.

11 (C) "EMARYLAND MARKETPLACE" MEANS THE INTERNET-BASED  
12 PROCUREMENT SYSTEM MANAGED BY THE DEPARTMENT OF GENERAL SERVICES.

13 (D) "EVALUATED BID PRICE" MEANS THE PRICE OF A BID AFTER ADJUSTMENT  
14 IN ACCORDANCE WITH OBJECTIVE MEASURABLE CRITERIA.

15 (E) "HIGH PERFORMANCE BUILDING" MEANS A BUILDING THAT ACHIEVES AT  
16 LEAST:

17 (1) A SILVER RATING ACCORDING TO THE U.S. GREEN BUILDING  
18 COUNCIL'S LEED (LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN) GREEN  
19 BUILDING RATING SYSTEM AS ADOPTED BY THE MARYLAND GREEN BUILDING  
20 COUNCIL; OR

21 (2) A COMPARABLE RATING ACCORDING TO ANY OTHER APPROPRIATE  
22 RATING SYSTEM.

23 (F) (1) "OBJECTIVE MEASURABLE CRITERIA" MEANS STANDARDS THAT  
24 ENABLE THE STATE TO COMPARE THE ECONOMY, EFFECTIVENESS, OR VALUE OF  
25 THE SUBJECT OF THE BIDS.

26 (2) "OBJECTIVE MEASURABLE CRITERIA" INCLUDES STANDARDS OF  
27 RELIABILITY, OPERATIONAL COSTS, MAINTAINABILITY, USEFUL LIFE, AND RESIDUAL  
28 VALUE.

29 13-102.

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

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

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

- 1 (3) sole source procurement under § 13-107 of this subtitle;
- 2 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 3 (5) small procurement under § 13-109 of this subtitle;
- 4 (6) an intergovernmental cooperative purchasing agreement under §  
5 13-110 of this subtitle;
- 6 (7) auction bids under § 13-111 of this subtitle; or
- 7 (8) an unsolicited proposal under § 13-107.1 of this subtitle.

8 13-103.

9 (a) (1) Whenever procurement is based on competitive sealed bids, a  
10 procurement officer shall seek bids by issuing an invitation for bids.

11 (2) Subject to subsection (b) of this section, an invitation for bids shall  
12 include:

- 13 (i) the specifications of the procurement contract;
- 14 (ii) whether the procurement contract will be awarded based on the  
15 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §  
16 11-202(3) of this article, the bid most favorable to the State;
- 17 (iii) if the procurement contract will be based on evaluated bid price,  
18 the objective measurable criteria by which the lowest evaluated bid price will be  
19 determined; and
- 20 (iv) if the Secretary of General Services, the Secretary of  
21 Transportation, or the Chancellor of the University System of Maryland has so  
22 designated, the small business preference.

23 (e) (1) (I) [After] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
24 PARAGRAPH, AFTER obtaining any approval required by law, the procurement officer  
25 shall award the procurement contract to the responsible bidder who submits the  
26 responsive bid that:

- 27 [(i)] 1. is the lowest bid price;
- 28 [(ii)] 2. if the invitation for bids so provides, is the lowest  
29 evaluated bid price; or
- 30 [(iii)] 3. for procurement subject to § 11-202(3) of this article, is the  
31 bid most favorable to the State.

32 (II) FOR THE DESIGN AND CONSTRUCTION OF A NEW BUILDING  
33 THAT IS STATE-OWNED OR THAT IS DESIGNED OR CONSTRUCTED USING STATE  
34 FUNDS, THE PROCUREMENT OFFICER SHALL AWARD THE PROCUREMENT CONTRACT

1 TO THE RESPONSIBLE BIDDER WITH THE LOWEST RESPONSIVE BID PRICE OR  
2 EVALUATED BID PRICE FOR A HIGH PERFORMANCE BUILDING IF THE DIFFERENCE  
3 OVER WHICH THAT BID EXCEEDS THE LOWEST RESPONSIVE BID PRICE OR  
4 EVALUATED BID PRICE FOR A BUILDING THAT IS NOT A HIGH PERFORMANCE  
5 BUILDING DOES NOT EXCEED 10%.

6 13-104.

7 (a) Competitive sealed proposals may be used if:

8 (1) the procurement is for human, social, cultural, or educational  
9 services;

10 (2) with the approval of the head of a unit, the procurement officer  
11 determines that specifications cannot be prepared that allow an award based on the  
12 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §  
13 11-202(3) of this article, the bid most favorable to the State; or

14 (3) the head of the unit determines that:

15 (i) the need to use a method other than competitive sealed bids is  
16 sufficiently compelling to override the general public policy that favors awarding  
17 procurement contracts on the basis of competitive sealed bids; and

18 (ii) the use of competitive sealed bidding for that procurement  
19 contract is not practicable or not advantageous to the State.

20 (b) (1) Whenever procurement is based on competitive sealed proposals, a  
21 procurement officer shall seek proposals by issuing a request for proposals.

22 (2) A request for proposals shall include a statement of:

23 (i) the scope of the procurement contract;

24 (ii) the factors[, including price,] that will be used in evaluating  
25 proposals, INCLUDING PRICE AND, IF APPLICABLE, THE HIGH PERFORMANCE  
26 BUILDINGS PREFERENCE UNDER SUBSECTION (F) OF THIS SECTION; and

27 (iii) the relative importance of each factor.

28 (f) (1) After obtaining any approval required by law, the procurement  
29 officer shall award the procurement contract to the responsible offeror who submits  
30 the proposal or best and final offer determined to be the most advantageous to the  
31 State considering the evaluation factors set forth in the request for proposals.

32 (2) IN EVALUATING A PROPOSAL FOR THE DESIGN AND CONSTRUCTION  
33 OF A NEW BUILDING THAT IS STATE-OWNED OR THAT IS DESIGNED OR  
34 CONSTRUCTED WITH STATE FUNDS, THE PROCUREMENT OFFICER SHALL INCREASE  
35 THE EVALUATED PRICE FACTOR BY 10% FOR A RESPONSIVE BID FOR A HIGH  
36 PERFORMANCE BUILDING.

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