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By: **Washington County Delegation**

Introduced and read first time: February 10, 2005

Assigned to: Health and Government Operations

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Committee Report: Favorable

House action: Adopted

Read second time: March 15, 2005

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CHAPTER\_\_\_\_\_

1 AN ACT concerning

2 **Washington County - Emergency or Expedited Procurements - Revised Bids**  
 3 **- Required Clauses**

4 FOR the purpose of authorizing a county procurement officer to award a procurement  
 5 contract on the basis of revised bids under certain circumstances; describing  
 6 certain procedures the procurement officer shall follow regarding revised bids;  
 7 providing that revised bids are not subject to public notice requirements;  
 8 providing that certain county procurement provisions do not apply to emergency  
 9 or expedited procurements; requiring certain clauses in certain procurement  
 10 contracts; requiring certain information in required clauses for contract  
 11 modification or change orders; prohibiting contract modification or change  
 12 orders under certain circumstances; authorizing a county procurement officer to  
 13 make an emergency procurement or an expedited procurement under certain  
 14 circumstances; and generally relating to procurements in Washington County.

15 BY repealing and reenacting, with amendments,  
 16 The Public Local Laws of Washington County  
 17 Section 1-106  
 18 Article 22 - Public Local Laws of Maryland  
 19 (1991 Edition and December 1997 Supplement, as amended)

20 BY adding to  
 21 The Public Local Laws of Washington County  
 22 Section 1-106.4  
 23 Article 22 - Public Local Laws of Maryland  
 24 (1991 Edition and December 1997 Supplement, as amended)

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

3 **Article 22 - Washington County**

4 1-106.

5 (a) Except as provided in subsection (d) of this section, the County  
6 Commissioners or any employee of the county may not enter into any contract of sale  
7 or purchase or any contract for any county work, project, or other expenditure to  
8 which the county is a party where the amount involved in the contract exceeds  
9 \$25,000 without advertising for bids at least 1 week before the bid by publication in at  
10 least one newspaper that is published in the county or through electronic media.

11 (b) (1) A contract of sale shall be awarded to the highest responsible bidder.

12 (2) A contract of purchase or other expenditure shall be awarded to the  
13 lowest responsible bidder who submits a responsive bid.

14 (3) If a bidder has not paid all taxes owed to the county or a municipal  
15 corporation in the county, the County Commissioners may reject the bidder's bid.

16 (4) Notwithstanding the provisions of this subsection, the County  
17 Commissioners may reject any bid.

18 (5) (I) AFTER COMPETITIVE SEALED BIDS HAVE BEEN OPENED, A  
19 PROCUREMENT OFFICER MAY AWARD A PROCUREMENT CONTRACT ON THE BASIS OF  
20 REVISED BIDS IF:

21 1. ALL BIDS ARE REJECTED UNDER PARAGRAPH (4) OF THIS  
22 SUBSECTION;

23 2. ALL BID PRICES EXCEED THE FUNDS AVAILABLE FOR THE  
24 PROCUREMENT; OR

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

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

35 (III) AS PROMPTLY AS POSSIBLE, THE PROCUREMENT OFFICER  
36 SHALL:

1                                   1.       ISSUE AN INVITATION FOR REVISED BIDS, WHICH SHALL  
2 STATE WHETHER THE AWARD WILL BE MADE WITHOUT COMPETITIVE  
3 NEGOTIATIONS; AND

4                                   2.       REQUIRE A PROMPT RESPONSE TO THAT INVITATION.

5                                   (IV)   AN INVITATION FOR REVISED BIDS IS NOT SUBJECT TO PUBLIC  
6 NOTICE REQUIREMENTS.

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

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

14                                  1.       IS THE LOWEST BID PRICE; OR

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

17       (c)     (1)     Any contract entered into in violation of the provisions of this section  
18 is void.

19                                  (2)     (i)     The provisions of this section do not apply to:

20                                  1.       Any contract or other transaction involving the deposit of  
21 county funds in any authorized State or federal banking institution;

22                                  2.       [Necessary repairs made in case of emergency]  
23 EMERGENCY OR EXPEDITED PROCUREMENTS MADE UNDER § 1-106.4 OF THIS  
24 SUBTITLE;

25                                  3.       The purchase of tangible personal property at a public  
26 auction;

27                                  4.       Any contract for which the County Commissioners  
28 approve sole source procurement under § 1-106.2 of this subtitle; or

29                                  5.       A contract of sale or purchase of equipment or a contract  
30 for other expenditures by the Sheriff's Office, the State's Attorney's Office, or the  
31 Narcotics Task Force for use in covert operations.

32                                  (ii)    All records maintained for a procurement under paragraph  
33 (2)(i) 5 of this subsection shall remain confidential until the conclusion of the covert  
34 operation, at which time the records shall be made public.

35       (d)     Subject to § 1-301 of this title, the County Commissioners may enter into  
36 a contract of sale or purchase of real estate without advertising for bids.

1 (E) (1) EACH PROCUREMENT CONTRACT SHALL INCLUDE CLAUSES  
2 COVERING:

3 (I) TERMINATION FOR DEFAULT;

4 (II) TERMINATION WHOLLY OR PARTLY BY THE COUNTY FOR ITS  
5 CONVENIENCE IF THE HEAD OF THE PRIMARY PROCUREMENT UNIT DETERMINES  
6 THAT TERMINATION IS APPROPRIATE;

7 (III) VARIATIONS THAT OCCUR BETWEEN ESTIMATED AND ACTUAL  
8 QUANTITIES OF WORK IN A PROCUREMENT CONTRACT;

9 (IV) LIQUIDATED DAMAGES, AS APPROPRIATE;

10 (V) SPECIFIED EXCUSES FOR NONPERFORMANCE;

11 (VI) EXCEPT FOR REAL PROPERTY LEASES, THE UNILATERAL RIGHT  
12 OF THE COUNTY TO ORDER IN WRITING:

13 1. CHANGES IN THE WORK, IF THE CHANGES ARE WITHIN  
14 THE SCOPE OF THE PROCUREMENT CONTRACT; AND

15 2. A TEMPORARY STOP OR DELAY IN PERFORMANCE; AND

16 (VII) THE OBLIGATION OF THE CONTRACTOR TO COMPLY WITH THE  
17 POLITICAL CONTRIBUTION REPORTING REQUIREMENTS UNDER TITLE 14 OF THE  
18 ELECTION LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND, TO WHICH THE  
19 CONTRACTOR MAY BE SUBJECT AS REQUIRED UNDER § 17-402 OF THE STATE  
20 FINANCE AND PROCUREMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

21 (2) IN ADDITION TO THE CLAUSES REQUIRED UNDER PARAGRAPH (1) OF  
22 THIS SUBSECTION, A PROCUREMENT CONTRACT FOR CONSTRUCTION SHALL  
23 INCLUDE:

24 (I) A CLAUSE PROVIDING FOR CONTRACT MODIFICATION IF THE  
25 CONDITION OF A SITE DIFFERS FROM THE CONDITION DESCRIBED IN THE  
26 SPECIFICATIONS; AND

27 (II) A CLAUSE COVERING THE REQUIREMENTS FOR NOTICE OF  
28 CONTRACT CLAIMS, SUBMISSION OF CONTRACT CLAIMS, AND RESOLUTION OF  
29 CONTRACT CLAIMS.

30 (3) EACH PROCUREMENT CONTRACT SHALL INCLUDE A CLAUSE THAT  
31 GIVES TO THE PARTIES NOTICE THAT PREEXISTING REGULATIONS APPLY TO THE  
32 PROCUREMENT CONTRACT.

33 (4) AT ANY TIME AFTER THE PARTIES ENTER INTO A PROCUREMENT  
34 CONTRACT THEY MAY INCLUDE ADDITIONAL CLAUSES IN THE PROCUREMENT  
35 CONTRACT, BY CONSENT, WITHOUT CONSIDERATION.

1 (5) A CLAUSE REQUIRED UNDER THIS SECTION FOR CONTRACT  
2 MODIFICATION OF OR CHANGE ORDERS TO A PROCUREMENT CONTRACT FOR  
3 CONSTRUCTION SHALL:

4 (I) MAKE EACH CONTRACT MODIFICATION OR CHANGE ORDER  
5 THAT AFFECTS THE PRICE OF THE PROCUREMENT CONTRACT SUBJECT TO:

6 1. PRIOR WRITTEN APPROVAL FROM THE UNIT AND ANY  
7 OTHER PERSON RESPONSIBLE FOR THE PROCUREMENT CONTRACT; AND

8 2. PRIOR CERTIFICATION BY THE FISCAL AUTHORITY  
9 RESPONSIBLE FOR THE UNIT ABOUT:

10 A. THE AVAILABILITY OF MONEY; AND

11 B. THE EFFECT OF THE CONTRACT MODIFICATION OR  
12 CHANGE ORDER ON THE PROJECT BUDGET OR THE TOTAL CONSTRUCTION COST;  
13 AND

14 (II) PROHIBIT THE CONTRACT MODIFICATION OR CHANGE ORDER  
15 IF THE CERTIFICATION BY THE FISCAL AUTHORITY DISCLOSES THAT THE CONTRACT  
16 MODIFICATION OR CHANGE ORDER WILL INCREASE THE COST BEYOND BUDGETED  
17 AND AVAILABLE MONEY, UNLESS:

18 1. SUFFICIENT ADDITIONAL MONEY IS MADE AVAILABLE; OR

19 2. THE SCOPE OF THE PROJECT IS ADJUSTED TO ALLOW  
20 COMPLETION WITHIN THE PROJECT BUDGET.

21 1-106.4.

22 (A) IN THIS SECTION, "EMERGENCY" MEANS A SUDDEN AND UNEXPECTED  
23 OCCURRENCE OR CONDITION, WHICH AGENCY MANAGEMENT REASONABLY COULD  
24 NOT FORESEE, THAT REQUIRES AN ACTION TO AVOID OR TO MITIGATE SERIOUS  
25 DAMAGE TO PUBLIC HEALTH, SAFETY, OR WELFARE.

26 (B) (1) THE PROCUREMENT OFFICER MAY MAKE AN EMERGENCY  
27 PROCUREMENT BY ANY METHOD THAT THE PROCUREMENT OFFICER CONSIDERS  
28 MOST APPROPRIATE TO AVOID OR MITIGATE SERIOUS DAMAGE TO PUBLIC HEALTH,  
29 SAFETY, OR WELFARE.

30 (2) THE PROCUREMENT OFFICER SHALL:

31 (I) OBTAIN AS MUCH COMPETITION AS POSSIBLE UNDER THE  
32 CIRCUMSTANCES;

33 (II) LIMIT THE EMERGENCY PROCUREMENT TO THE  
34 PROCUREMENT OF ONLY THOSE ITEMS, BOTH IN TYPE AND QUANTITY, NECESSARY  
35 TO AVOID OR TO MITIGATE SERIOUS DAMAGE TO PUBLIC HEALTH, SAFETY, OR  
36 WELFARE; AND

1 (III) AFTER AWARDING THE PROCUREMENT CONTRACT, SUBMIT TO  
2 THE BOARD OF COUNTY COMMISSIONERS A WRITTEN REPORT THAT GIVES THE  
3 JUSTIFICATION FOR USE OF THE EMERGENCY PROCUREMENT PROCEDURE.

4 (C) (1) THE PROCUREMENT OFFICER MAY MAKE A PROCUREMENT ON AN  
5 EXPEDITED BASIS IF THE HEAD OF THE UNIT AND THE BOARD OF COUNTY  
6 COMMISSIONERS FIND THAT:

7 (I) URGENT CIRCUMSTANCES REQUIRE PROMPT ACTION;

8 (II) AN EXPEDITED PROCUREMENT BEST SERVES THE PUBLIC  
9 INTEREST; AND

10 (III) THE NEED FOR THE EXPEDITED PROCUREMENT OUTWEIGHS  
11 THE BENEFITS OF MAKING THE PROCUREMENT ON THE BASIS OF COMPETITIVE  
12 SEALED BIDS OR COMPETITIVE SEALED PROPOSALS.

13 (2) THE PROCUREMENT OFFICER SHALL ATTEMPT TO OBTAIN AS MUCH  
14 COMPETITION AS REASONABLY POSSIBLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
16 effect October 1, 2005.