
By: **Delegate Bates**

Introduced and read first time: January 20, 2006

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Private Attorney Contracts - Requirements**

3 FOR the purpose of requiring the Board of Public Works, prior to award of certain
4 contracts for procurement of private attorney services, to submit these contracts
5 to certain committees of the General Assembly for review and comment;
6 establishing a time line for the review and comment process; requiring that
7 certain contracts contain certain provisions; requiring that contingency fee
8 contracts for attorney services be made subject to certain standards; and
9 generally relating to certain contracts for procurement of legal services.

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 12-101 and 13-215
13 Annotated Code of Maryland
14 (2001 Replacement Volume and 2005 Supplement)

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

17 **Article - State Finance and Procurement**

18 12-101.

19 (a) This section does not apply to capital expenditures by the Department of
20 Transportation or the Maryland Transportation Authority, in connection with State
21 roads, bridges, or highways, as provided in § 12-202 of this title.

22 (b) (1) The Board may control procurement by units.

23 (2) To implement the provisions of this Division II, the Board may:

24 (i) set policy;

25 (ii) adopt regulations, in accordance with Title 10, Subtitle 1 of the
26 State Government Article; and

1 (iii) establish internal operational procedures consistent with this
2 Division II.

3 (3) The Board shall ensure that the regulations of the primary
4 procurement units provide for procedures that are consistent with this Division II
5 and, to the extent the circumstances of a particular type of procurement or a
6 particular unit do not require otherwise, are substantially the same.

7 (4) The Board may delegate any of its authority that it determines to be
8 appropriate for delegation and may require prior Board approval for specified
9 procurement actions.

10 (5) Except as limited by the State Constitution, the Board may exercise
11 any control authority conferred on a primary procurement unit by this Division II
12 and, to the extent that its action conflicts with the action of the primary procurement
13 unit, the action of the Board shall prevail.

14 (6) The Board, with the assistance of the Department of Budget and
15 Management, shall compile comprehensive statistics on the procurement system by
16 agency, amount, and type of procurement.

17 (7) The Board shall develop and submit to the General Assembly, in
18 accordance with § 2-1246 of the State Government Article, an annual report on the
19 procurement system that includes information on actions necessary to improve
20 effective broad-based competition in procurement.

21 (8) (I) AT LEAST 75 DAYS BEFORE EXECUTING A PROCUREMENT
22 CONTRACT FOR ATTORNEY SERVICES WHERE THE FEE FOR THOSE SERVICES
23 EXCEEDS, OR CAN BE REASONABLY EXPECTED TO EXCEED, \$1,000,000, THE BOARD
24 SHALL PROVIDE A COPY OF THE CONTRACT TO:

25 1. THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL
26 ASSEMBLY WHEN THE GENERAL ASSEMBLY IS NOT IN SESSION; OR

27 2. ONE OR MORE OF THE APPROPRIATE STANDING
28 COMMITTEES OF THE GENERAL ASSEMBLY WHEN THE GENERAL ASSEMBLY IS IN
29 SESSION.

30 (II) IF THE BOARD RECEIVES RECOMMENDATIONS FOR CHANGES
31 TO THE CONTRACT FROM A COMMITTEE OF THE GENERAL ASSEMBLY IN
32 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD SHALL:

33 1. INCORPORATE THE RECOMMENDED CHANGES TO THE
34 CONTRACT; OR

35 2. STATE, IN WRITING, ITS REASONS FOR NOT
36 INCORPORATING THE RECOMMENDED CHANGES.

1 (III) IF NO RESPONSE FROM A COMMITTEE OF THE GENERAL
2 ASSEMBLY IS RECEIVED WITHIN 45 DAYS FROM THE DAY WHEN THE COMMITTEE
3 RECEIVED THE CONTRACT, THE BOARD MAY AWARD THE CONTRACT AS PROPOSED.

4 13-215.

5 (a) A unit may not enter into a cost-reimbursement contract unless the
6 procurement officer determines that:

7 (1) a cost-reimbursement contract is likely to be less costly to the State
8 than any other type of contract; or

9 (2) except for leases of real property, the kind or quality of procurement
10 that the unit requires could not be obtained practicably under any other type of
11 contract.

12 (b) A unit may not enter into a procurement contract that is wholly or partly a
13 cost-reimbursement contract unless the procurement officer determines that the
14 accounting system of the contractor:

15 (1) will allow timely development of all necessary cost data in the form
16 required by the specific type of procurement contract under consideration; and

17 (2) is adequate to allocate costs in accordance with generally accepted
18 accounting principles.

19 (c) A cost-reimbursement contract shall provide that costs, including costs for
20 subcontractors, will be reimbursed only if the costs are allowable and allocable under:

21 (1) the procurement contract; or

22 (2) the regulations of the Board on Cost Principles.

23 (d) A contractor under a cost-reimbursement contract shall give notice to and,
24 as required under the contract, obtain approval from a procurement officer before the
25 contractor enters into:

26 (1) a cost-reimbursement subcontract; or

27 (2) any subcontract involving more than:

28 (i) \$25,000; or

29 (ii) 5% of the estimated cost of the procurement contract.

30 (E) A CONTINGENCY FEE CONTRACT FOR ATTORNEY SERVICES THAT
31 INCLUDES EXPENSE REIMBURSEMENT PROVISIONS SHALL PROVIDE THAT THE
32 TOTAL FEE MUST BE REASONABLE AND IN CONFORMANCE WITH THE STANDARDS
33 ESTABLISHED IN THE MARYLAND RULES OF PROFESSIONAL CONDUCT.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2006.