

HOUSE BILL 124

P2

9lr1680
CF SB 187

By: **Delegates Morhaim, Barnes, Branch, Conaway, Glenn, Harrison, Oaks, Robinson, Tarrant, V. Turner, and Walker**

Introduced and read first time: January 23, 2009

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2009

CHAPTER _____

1 AN ACT concerning

2 **State Procurement - ~~Structuring and~~ Bundling of Procurements**

3 FOR the purpose of prohibiting a unit of State government subject to the State
4 procurement law from ~~structuring or~~ bundling a procurement, limiting the
5 number of competitive bidders or offerors, or limiting certain participation to a
6 predetermined group of bidders or offerors for the purpose of precluding or
7 limiting participation by certain entities under certain circumstances; providing
8 for the application of this Act; defining a certain term; and generally relating to
9 prohibitions governing the ~~structuring or~~ bundling of a procurement.

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 11-201
13 Annotated Code of Maryland
14 (2006 Replacement Volume and 2008 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 11-201.

19 (a) The purposes and policies of this Division II include:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



- 1 (1) providing for increased confidence in State procurement;
- 2 (2) ensuring fair and equitable treatment of all persons who deal with
3 the State procurement system;
- 4 (3) providing safeguards for maintaining a State procurement system
5 of quality and integrity;
- 6 (4) fostering effective broad-based competition in the State through
7 support of the free enterprise system;
- 8 (5) promoting increased long-term economic efficiency and
9 responsibility in the State by encouraging the use of recycled materials;
- 10 (6) providing increased economy in the State procurement system;
- 11 (7) getting the maximum benefit from the purchasing power of the
12 State;
- 13 (8) simplifying, clarifying, and modernizing the law that governs State
14 procurement;
- 15 (9) allowing the continued development of procurement regulations,
16 policies, and practices in the State; and
- 17 (10) promoting development of uniform State procurement procedures
18 to the extent possible.

19 (b) Unless otherwise indicated, this Division II shall be construed liberally
20 and applied to promote the purposes and policies enumerated in subsection (a) of this
21 section.

22 (c) If a provision of this Division II is inconsistent with a federal law,
23 regulation, or grant agreement or other federal requirement that governs procurement
24 or a procurement contract or with the terms of a gift, as defined in Article 1, § 22 of the
25 Code, the federal requirement or the terms of the gift control the procurement or
26 procurement contract.

27 (d) (1) **IN THIS ~~SUBSECTION, “CONTRACT BUNDLING” MEANS~~**
28 **SUBSECTION, “BUNDLE” MEANS THE CONSOLIDATION OF TWO OR MORE**
29 **PROCUREMENT REQUIREMENTS FOR ~~GOODS~~ SUPPLIES OR SERVICES**
30 **PREVIOUSLY PROVIDED OR PERFORMED UNDER SEPARATE CONTRACTS INTO A**
31 **SINGLE SOLICITATION SEEKING OFFERS FOR A SINGLE CONTRACT THAT IS**
32 **UNLIKELY TO BE ACCESSIBLE FOR AWARD TO A SMALL BUSINESS OR MINORITY**
33 **BUSINESS ENTERPRISE.**

1 **(2) THIS SUBSECTION DOES NOT APPLY IF A UNIT BUNDLES A**
2 **PROCUREMENT FOR THE PURPOSE OF PARTICIPATING IN THE SMALL BUSINESS**
3 **RESERVE PROGRAM IN ACCORDANCE WITH TITLE 14, SUBTITLE 5 OF THIS**
4 **ARTICLE.**

5 **(2) (3) EXCEPT FOR THE PURPOSE OF A UNIT'S PARTICIPATION IN**
6 **THE SMALL BUSINESS RESERVE PROGRAM IN ACCORDANCE WITH TITLE 14,**
7 **SUBTITLE 5 OF THIS ARTICLE, A UNIT SUBJECT TO THIS DIVISION II MAY NOT**
8 **STRUCTURE OR BUNDLE A PROCUREMENT FOR THE PURPOSE OF FOR THE**
9 **PURPOSE OF PRECLUDING OR LIMITING PARTICIPATION BY A MINORITY**
10 **BUSINESS ENTERPRISE AS DEFINED UNDER TITLE 14, SUBTITLE 3 OF THIS**
11 **ARTICLE OR A SMALL BUSINESS AS DEFINED UNDER TITLE 14, SUBTITLE 2 OF**
12 **THIS ARTICLE A UNIT SUBJECT TO THIS DIVISION II MAY NOT:**

13 **(I) PRECLUDING PARTICIPATION BY MINORITY BUSINESS**
14 **ENTERPRISES UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE OR ANY OTHER**
15 **SMALL BUSINESS AS DEFINED UNDER TITLE 14, SUBTITLE 2 OF THIS ARTICLE**
16 **BUNDLE A PROCUREMENT;**

17 **(II) LIMITING LIMIT THE NUMBER OF COMPETITIVE**
18 **BIDDERS OR OFFERORS; OR**

19 **(III) LIMITING LIMIT PARTICIPATION TO A PREDETERMINED**
20 **GROUP OF BIDDERS OR OFFERORS; OR.**

21 **(IV) CONTRACT BUNDLING.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.