

# CHAPTER 677

(House Bill 533)

AN ACT concerning

## Cooperative Purchasing Agreements – Requirements and Expansion of Use

FOR the purpose of requiring that certain procurement contracts entered into by State and local entities include certain provisions that facilitate certain other State, local, and not-for-profit entities to participate in the contracts; authorizing State and local entities to enter into certain agreements for the cooperative or joint administration of programs with other State or local entities; ~~requiring that State and local entities make certain efforts to determine if another State or local entity is participating in a certain contract before initiating a certain procurement;~~ authorizing State and local entities to participate in certain State or local contracts if certain determinations are made; ~~authorizing certain not for profit entities to participate in certain State or local contracts if certain bidding is used; authorizing that in certain fiscal years, certain secretaries may withhold certain percentages of funds distributed under certain programs to local entities under certain circumstances;~~ providing certain legislative intent; requiring certain units of State government to publish on a website a list of certain procurement solicitations; requiring the Procurement Advisory Council in the Board of Public Works to report to certain committees of the General Assembly on or before a certain date; defining certain terms; and generally relating to requirements and expansion of use for cooperative purchasing agreements.

BY repealing and reenacting, with amendments,  
Article – State Finance and Procurement  
Section 13–110  
Annotated Code of Maryland  
(2006 Replacement Volume and 2008 Supplement)

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

### Article – State Finance and Procurement

13–110.

- (a) (1) In this section the following words have the meanings indicated.

**(2) “COOPERATIVE ENTITY” MEANS ONE OR MORE STATE OR LOCAL ENTITIES THAT ENTER INTO AN AGREEMENT FOR THE COOPERATIVE OR JOINT ADMINISTRATION OF PROGRAMS.**

**[(2)] (3)** “Governmental entity” means:

- (i) the federal government or an agency or other instrumentality of the federal government;
- (ii) another state or an agency or other instrumentality of another state;
- (iii) a bistate or multistate agency;
- (iv) a county, municipal corporation, or other political subdivision of the State or of another state, or an agency or other instrumentality of the political subdivision;
- (v) a bicounty or multicounty agency;
- (vi) a primary procurement unit; or
- (vii) an affiliation, alliance, consortium, or group composed solely of governmental entities that is established for purposes of promoting intergovernmental cooperative purchasing.

**[(3)] (4)** “Intergovernmental cooperative purchasing agreement” means a contract:

- (i)
  1. entered into by at least one governmental entity and a person selected in a manner that is consistent with the purposes set forth under § 11–201 of this article;
  2. that is available for use by the governmental entity entering the contract and at least one additional governmental entity which may, but need not be, an original party to the contract; and
  3. that is intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing; or
- (ii) between a primary procurement unit and a person who, at the time the intergovernmental cooperative purchasing agreement is awarded, has a contract with the federal government or an agency or other instrumentality of the federal government, and who agrees to provide the unit with identical prices, terms, and conditions as stipulated in the federal contract.

(5) (I) **“LOCAL ENTITY” MEANS A COUNTY, MUNICIPAL CORPORATION, BICOUNTY OR MULTICOUNTY AGENCY, PUBLIC AUTHORITY, SPECIAL TAXING DISTRICT, OR OTHER POLITICAL SUBDIVISION OR UNIT OF A POLITICAL SUBDIVISION OF THIS STATE.**

(II) **“LOCAL ENTITY” INCLUDES BOARDS OF EDUCATION AND LIBRARY BOARDS THAT RECEIVE FUNDING FROM THE STATE.**

(6) **“NOT-FOR-PROFIT ENTITY” MEANS A CORPORATION INCORPORATED IN THE STATE, OR OTHERWISE QUALIFIED TO DO BUSINESS IN THE STATE;**

~~(I) THAT HAS BEEN DETERMINED BY THE INTERNAL REVENUE SERVICE TO BE EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR (6) OF THE INTERNAL REVENUE CODE; AND~~

~~(II) THAT HAS ANNUAL REVENUES NOT GREATER THAN \$750,000.~~

(7) **“STATE ENTITY” MEANS A DEPARTMENT, BOARD, COMMISSION, AGENCY, OR A SUBUNIT IN THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF STATE GOVERNMENT.**

(b) (1) Subject to § 12-107 of this article, whenever a primary procurement unit procurement officer determines that it is in the best interest of the State to sponsor or participate in an intergovernmental cooperative purchasing agreement, with the approval of the unit head and subject to any other approval required by law, the primary procurement unit may become a party to or participate under the agreement.

(2) A determination under this subsection shall be in writing and include a statement that the intergovernmental cooperative purchasing agreement:

(i) will provide cost benefits to the State, promote administrative efficiencies, or promote intergovernmental cooperation; and

(ii) is not intended to evade the purposes of this Division II.

[(c) (1)] **(3)** If a primary procurement unit sponsors an intergovernmental cooperative purchasing agreement:

(i) the contract shall be awarded in the same manner as the contract would be awarded under this Division II if the unit was the sole participant under the contract; and

(ii) all procedures under this Division II, including procedures governing contract claims and protests, shall apply.

[(2) A political subdivision of the State may participate under any intergovernmental cooperative purchasing agreement sponsored by a primary procurement unit in a manner consistent with the terms of the agreement.]

[(d)] (4) If a primary procurement unit participates in an intergovernmental cooperative purchasing agreement, any protest or contract claim involving the agreement shall be handled in accordance with the terms of the agreement.

**(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EACH PROCUREMENT CONTRACT FOR SUPPLIES OR SERVICES ENTERED INTO BY A STATE OR LOCAL ENTITY SHALL INCLUDE A PROVISION THAT FACILITATES OTHER STATE AND LOCAL ENTITIES AND NOT-FOR-PROFIT ENTITIES TO PARTICIPATE IN THE CONTRACT.**

**(2) (I) THIS SUBSECTION DOES NOT APPLY TO:**

**1. A PROCUREMENT FOR A CAPITAL FACILITY, IMPROVEMENT, OR OTHER UNIQUE PURCHASE; OR**

**2. ~~SMALL PROCUREMENT AS DEFINED BY § 13-109 OF THIS SUBTITLE~~ A PROCUREMENT WITH A PROJECTED VALUE OF LESS THAN \$100,000.**

**(II) THIS SUBSECTION DOES NOT APPLY IF THE STATE OR LOCAL ENTITY DETERMINES THAT INCLUDING THE PROVISION WOULD:**

**1. UNDERMINE THE DESIRED TIMING OR EFFECT OF THE PROCUREMENT;**

**2. INTERFERE WITH THE STATE OR LOCAL ENTITY'S ABILITY TO MEET:**

**A. THE MINORITY BUSINESS ENTERPRISE GOALS PROVIDED UNDER § 14-302 OF THIS ARTICLE OR ANY OTHER MINORITY BUSINESS ENTERPRISE PROGRAM SPONSORED BY THE LOCAL ENTITY; OR**

**B. THE SMALL BUSINESS RESERVE PROGRAM REQUIREMENTS UNDER § 14-502 OF THIS ARTICLE OR ANY OTHER SMALL BUSINESS PROCUREMENT PROGRAM SPONSORED BY THE LOCAL ENTITY; OR**

**3. NOT BE IN THE BEST INTEREST OF THE ENTITY.**

**(D) (1) A STATE OR LOCAL ENTITY MAY ENTER INTO AN AGREEMENT FOR THE COOPERATIVE OR JOINT ADMINISTRATION OF PROGRAMS WITH ONE OR MORE OTHER STATE OR LOCAL ENTITIES.**

**(2) A COOPERATIVE ENTITY ESTABLISHED UNDER THIS SECTION MAY ADMINISTER THE PROGRAMS AND EXERCISE THE POWERS AND DUTIES SPECIFICALLY DELEGATED TO THE COOPERATIVE ENTITY BY THE AGREEMENT THAT ESTABLISHED THE COOPERATIVE ENTITY.**

**(3) AN AGREEMENT DESCRIBED UNDER THIS SUBSECTION DOES NOT RELIEVE A STATE OR LOCAL ENTITY OR OTHER PARTICIPANT OF THE AGREEMENT FROM ANY OBLIGATION OR RESPONSIBILITY IMPOSED ON THE ENTITY BY LAW.**

~~**(E) BEFORE INITIATING A PROCUREMENT FOR SUPPLIES OR SERVICES, A STATE OR LOCAL ENTITY SHALL MAKE A REASONABLE EFFORT TO DETERMINE IF ANOTHER STATE OR LOCAL ENTITY IS PARTICIPATING IN A CONTRACT FOR THE SAME SUPPLIES OR SERVICES.**~~

~~**(F)**~~ **(E) NOTWITHSTANDING ANY OTHER LAW, A STATE OR LOCAL ENTITY MAY PARTICIPATE IN AN EXISTING STATE OR LOCAL CONTRACT DRAFTED IN ACCORDANCE WITH THIS SECTION, IF THE GOVERNING BODY OF THE ENTITY DETERMINES THAT PARTICIPATION WOULD:**

**(1) PROVIDE A COST SAVINGS IN PURCHASE PRICE OR ADMINISTRATIVE BURDEN; OR**

**(2) FURTHER OTHER POLICY GOALS INCLUDING OPERATIONAL AND ENERGY-EFFICIENCY GOALS RELATED TO THE PURCHASE, OPERATION, OR MAINTENANCE OF THE SUPPLY OR SERVICE.**

~~**(G) A NOT-FOR-PROFIT ENTITY MAY PARTICIPATE IN A STATE OR LOCAL CONTRACT DRAFTED IN ACCORDANCE WITH THIS SECTION IF THE STATE OR LOCAL ENTITY USES AUCTION BIDDING IN ACCORDANCE WITH § 13-111 OF THIS SUBTITLE.**~~

~~**(H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**~~

~~**(H) "PROGRAM" MEANS:**~~

~~1. THE FOUNDATION PROGRAM OR ANY OTHER PROGRAM FOR BASIC CURRENT EXPENSES FUNDED IN ACCORDANCE WITH TITLE 5, SUBTITLE 2 OF THE EDUCATION ARTICLE;~~

~~2. THE COUNTY STATE MINIMUM LIBRARY PROGRAM OR ANY OTHER PROGRAM FUNDED IN ACCORDANCE WITH TITLE 23, SUBTITLE 5 OF THE EDUCATION ARTICLE;~~

~~3. LOCAL HEALTH PROGRAMS FUNDED IN ACCORDANCE WITH TITLE 2, SUBTITLE 5 OF THE HEALTH GENERAL ARTICLE; AND~~

~~4. HIGHWAY USER PROGRAMS FUNDED IN ACCORDANCE WITH TITLE 8, SUBTITLE 4 OF THE TRANSPORTATION ARTICLE.~~

~~(III) "SECRETARY" MEANS:~~

- ~~1. THE SUPERINTENDENT OF SCHOOLS;~~
- ~~2. THE SECRETARY OF HEALTH AND MENTAL HYGIENE; OR~~
- ~~3. THE SECRETARY OF TRANSPORTATION.~~

~~(2) A SECRETARY MAY WITHHOLD FUNDS DISTRIBUTED UNDER A PROGRAM TO A LOCAL ENTITY AS FOLLOWS:~~

~~(I) FOR FISCAL YEAR 2010, A SECRETARY MAY WITHHOLD UP TO .5% UNLESS THE LOCAL ENTITY:~~

- ~~1. REPORTS THAT THE LOCAL ENTITY HAS ENTERED OR DEMONSTRATES THAT IT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT;~~
- ~~2. SUBMITS A PLAN FOR IMPLEMENTING AN INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~
- ~~3. DEMONSTRATES THAT PROCUREMENT FOR THE LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT COMPLIES WITH ITEM 1 OR 2 OF THIS ITEM;~~

~~(II) FOR FISCAL YEAR 2011, A SECRETARY MAY WITHHOLD UP TO .5% UNLESS THE LOCAL ENTITY:~~

~~1. DEMONSTRATES THAT THE LOCAL ENTITY ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~

~~2. DEMONSTRATES THAT PROCUREMENT FOR THE LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; AND~~

~~(III) FOR FISCAL YEAR 2012, A SECRETARY MAY WITHHOLD UP TO 1% UNLESS THE LOCAL ENTITY:~~

~~1. DEMONSTRATES THAT THE LOCAL ENTITY ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT; OR~~

~~2. DEMONSTRATES THAT PROCUREMENT FOR THE LOCAL ENTITY OCCURS THROUGH ANOTHER GOVERNMENTAL ENTITY THAT ACTIVELY PARTICIPATES IN AT LEAST ONE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT.~~

SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly intends for State and local entities to collaborate on how to promote communication and efficiency in procurement.

SECTION 3. AND BE IT FURTHER ENACTED, That the Department of General Services, the Department of Transportation, the Department of Information Technology, and the Department of Budget and Management shall ~~work with the Maryland Association of Counties and the Maryland Municipal League to develop educational tools for counties and municipalities on procurement efficiencies and price saving, including seminars, pamphlets, and newsletters~~ publish on a website a list of all procurement solicitations reasonably expected to have a projected value of \$100,000 or more that are submitted by a procurement agency in accordance with COMAR 21.11.03.08.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2009, the Procurement Advisory Council in the Board of Public Works shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2-1246 of the State Government Article, on:

(1) the extent of collaboration and cooperation that exists among State and local entities for public purchasing;

(2) means in place for making information about State and local contracts available to other State and local entities; ~~and~~

(3) means and methods for expanding items (1) and (2) of this subsection in order to improve cost effectiveness and efficiency in procurement; and

(4) methods for maximizing the opportunity for small businesses to compete for intergovernmental cooperative purchasing contracts that are not solicited through eMaryland Marketplace.

(b) In developing the report, the Procurement Advisory Council shall consult with:

(1) the Department of Budget and Management;

(2) the Department of General Services;

(3) the Department of Information Technology;

(4) the Maryland Association of Counties;

(5) the Maryland Municipal League;

(6) the Maryland Association of Boards of Education; ~~and~~

(7) the Maryland Department of Transportation; and

~~(7)~~ (8) any other State, local, or regional entity participating in or providing information on public procurement.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2009.

**Approved by the Governor, May 19, 2009.**