

HOUSE BILL 199

P2
HB 1203/09 – HGO

3lr0480

By: **Delegate Rosenberg**

Introduced and read first time: January 20, 2023

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Intergovernmental Cooperative Purchasing Agreements –**
3 **Required Notice and Reporting**

4 FOR the purpose of requiring the Department of General Services, before it enters into or
5 renews a certain intergovernmental cooperative purchasing agreement, to advertise
6 the solicitation on eMaryland Marketplace for a certain period of time; and generally
7 relating to intergovernmental cooperative purchasing agreements.

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 13–110
11 Annotated Code of Maryland
12 (2021 Replacement Volume and 2022 Supplement)

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

15 **Article – State Finance and Procurement**

16 13–110.

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

18 (2) “Cooperative entity” means one or more State or local entities that enter
19 into an agreement for the cooperative or joint administration of programs.

20 (3) “Governmental entity” means:

21 (i) the federal government or an agency or other instrumentality of
22 the federal government;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) another state or an agency or other instrumentality of another
2 state;

3 (iii) a bistate or multistate agency;

4 (iv) a county, municipal corporation, or other political subdivision of
5 the State or of another state, or an agency or other instrumentality of the political
6 subdivision;

7 (v) a bicounty or multicounty agency;

8 (vi) a primary procurement unit; or

9 (vii) an affiliation, alliance, consortium, or group composed solely of
10 governmental entities that is established for purposes of promoting intergovernmental
11 cooperative purchasing.

12 (4) "Intergovernmental cooperative purchasing agreement" means a
13 contract:

14 (i) 1. entered into by at least one governmental entity and a
15 person selected in a manner that is consistent with the purposes set forth under § 11–201
16 of this article;

17 2. that is available for use by the governmental entity
18 entering the contract and at least one additional governmental entity which may, but need
19 not be, an original party to the contract; and

20 3. that is intended to promote efficiency and savings that can
21 result from intergovernmental cooperative purchasing; or

22 (ii) between a primary procurement unit and a person who, at the
23 time the intergovernmental cooperative purchasing agreement is awarded, has a contract
24 with the federal government or an agency or other instrumentality of the federal
25 government, and who agrees to provide the unit with identical prices, terms, and conditions
26 as stipulated in the federal contract.

27 (5) (i) "Local entity" means a county, municipal corporation, bicounty
28 or multicounty agency, public authority, special taxing district, or other political
29 subdivision or unit of a political subdivision of this State.

30 (ii) "Local entity" includes boards of education and library boards
31 that receive funding from the State.

32 (6) "Nonprofit entity" means a corporation incorporated in the State, or
33 otherwise qualified to do business in the State that has been determined by the Internal

1 Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal
2 Revenue Code.

3 (7) "State entity" means a department, board, commission, agency, or a
4 subunit in the Executive branch of State government.

5 (b) (1) Subject to § 12-107 of this article, a primary procurement unit
6 procurement officer shall make a determination, in accordance with paragraph (2) or (3) of
7 this subsection, before the primary procurement unit may:

8 (i) initially sponsor or participate in an intergovernmental
9 cooperative purchasing agreement;

10 (ii) renew an intergovernmental cooperative purchasing agreement;
11 or

12 (iii) modify an intergovernmental cooperative purchasing agreement.

13 (2) A determination under paragraph (1)(i) of this subsection shall be in
14 writing and include:

15 (i) sufficient evidence that the intergovernmental cooperative
16 purchasing agreement:

17 1. will provide cost benefits to the State; or

18 2. will promote administrative efficiencies or promote
19 intergovernmental cooperation; and

20 (ii) a statement that the intergovernmental cooperative purchasing
21 agreement:

22 1. is in the best interest of the State; and

23 2. is not intended to evade the purposes of this Division II.

24 (3) A determination under paragraph (1)(ii) or (iii) of this subsection shall
25 be in writing and include:

26 (i) sufficient evidence that the intergovernmental cooperative
27 purchasing agreement:

28 1. will provide cost benefits to the State; and

29 2. will promote administrative efficiencies or promote
30 intergovernmental cooperation; and

1 (ii) a statement that the intergovernmental cooperative purchasing
2 agreement:

3 1. is in the best interest of the State; and

4 2. is not intended to evade the purposes of this Division II.

5 (4) A primary procurement unit shall post each determination required
6 under this subsection on the primary procurement unit's website.

7 (5) If a primary procurement unit sponsors an intergovernmental
8 cooperative purchasing agreement:

9 (i) the contract shall be awarded in the same manner as the contract
10 would be awarded under this Division II if the unit was the sole participant under the
11 contract, including compliance with all notice requirements; and

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

14 (6) If a primary procurement unit participates in an intergovernmental
15 cooperative purchasing agreement, any protest or contract claim involving the agreement
16 shall be handled in accordance with the terms of the agreement.

17 (7) If a primary procurement unit sponsors or participates in an
18 intergovernmental cooperative purchasing agreement, the intergovernmental cooperative
19 purchasing agreement shall be:

20 (i) approved by the unit head; and

21 (ii) subject to any other approval required by law.

22 (c) (1) Except as provided in paragraph (2) of this subsection, each
23 procurement contract for supplies or services entered into by a State or local entity shall
24 include a provision that facilitates other State and local entities and nonprofit entities to
25 participate in the contract.

26 (2) (i) This subsection does not apply to:

27 1. a procurement for a capital facility, improvement, or other
28 unique purchase; or

29 2. a procurement with a projected value of less than
30 \$100,000.

31 (ii) This subsection does not apply if the State or local entity
32 determines that including the provision would:

- 1 1. undermine the desired timing or effect of the procurement;
- 2 2. interfere with the State or local entity's ability to meet:
 - 3 A. the minority business enterprise goals provided under §
 - 4 14–302 of this article or any other minority business enterprise program sponsored by the
 - 5 local entity; or
 - 6 B. the Small Business Reserve Program requirements under
 - 7 § 14–502 of this article or any other small business procurement program sponsored by the
 - 8 local entity; or
- 9 3. not be in the best interest of the entity.

10 (d) (1) A State or local entity may enter into an agreement for the cooperative
11 or joint administration of programs with one or more other State or local entities.

12 (2) A cooperative entity established under this section may administer the
13 programs and exercise the powers and duties specifically delegated to the cooperative entity
14 by the agreement that established the cooperative entity.

15 (3) An agreement described under this subsection does not relieve a State
16 or local entity or other participant of the agreement from any obligation or responsibility
17 imposed on the entity by law.

18 (e) Notwithstanding any other law, a local entity may participate in an existing
19 State or local contract drafted in accordance with this section, if the governing body of the
20 entity determines that participation would:

21 (1) provide a cost savings in purchase price or administrative burden; or

22 (2) further other policy goals including operational and energy–efficiency
23 goals related to the purchase, operation, or maintenance of the supply or service.

24 **(F) BEFORE THE DEPARTMENT OF GENERAL SERVICES ENTERS INTO OR**
25 **RENEWS AN INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT THAT**
26 **COULD REDUCE TO A SINGLE CONTRACTOR OR REDUCE BY MORE THAN 50% THE**
27 **NUMBER OF CURRENT CONTRACTORS UNDER THE PROCUREMENT, THE**
28 **DEPARTMENT OF GENERAL SERVICES SHALL ADVERTISE THE SOLICITATION FOR A**
29 **MINIMUM OF 21 DAYS ON EMARYLAND MARKETPLACE.**

30 **(G) ON OR BEFORE SEPTEMBER 1, 2024, AND EACH YEAR THEREAFTER, THE**
31 **DEPARTMENT OF GENERAL SERVICES SHALL SUBMIT A REPORT TO THE GOVERNOR**
32 **AND, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, THE**

1 SENATE BUDGET AND TAXATION COMMITTEE AND THE HOUSE HEALTH AND
2 GOVERNMENT OPERATIONS COMMITTEE THAT INCLUDES:

3 (1) A LIST OF EACH INTERGOVERNMENTAL COOPERATIVE
4 PURCHASING AGREEMENT THE DEPARTMENT OF GENERAL SERVICES ENTERED
5 INTO OR RENEWED IN THE PRIOR FISCAL YEAR; AND

6 (2) FOR EACH AGREEMENT:

7 (I) WHETHER THE AGREEMENT WAS A RENEWAL OR A NEW
8 CONTRACT;

9 (II) THE DOLLAR VALUE AND DURATION OF THE AGREEMENT;

10 (III) A DESCRIPTION OF THE BIDDING PROCESS THAT RESULTED
11 IN EACH PROCUREMENT MADE THROUGH THE AGREEMENT;

12 (IV) WHETHER EACH PROCUREMENT MADE THROUGH THE
13 AGREEMENT WAS COMPETITIVE OR SOLE SOURCE;

14 (V) AN EXPLANATION OF WHY THE AGREEMENT WAS ENTERED
15 INTO OR RENEWED;

16 (VI) THE DIFFERENCE BETWEEN THE FINAL COST OF EACH
17 PROCUREMENT MADE THROUGH THE AGREEMENT COMPARED TO THE BID OR
18 OFFER PRICE;

19 (VII) THE DIFFERENCE BETWEEN THE FINAL COST OF A
20 PROCUREMENT FOR A REPRESENTATIVE SAMPLE OF GOODS OR SERVICES
21 PROCURED PRIOR TO ENTERING INTO THE AGREEMENT AND THE COST OF THE SAME
22 REPRESENTATIVE SAMPLE OF GOODS OR SERVICES PROCURED THROUGH THE
23 AGREEMENT;

24 (VIII) AN ASSESSMENT OF WHETHER THE COST BENEFITS TO THE
25 STATE, PROMOTION OF ADMINISTRATIVE EFFICIENCIES, OR PROMOTION OF
26 INTERGOVERNMENTAL COOPERATION PROVIDED UNDER SUBSECTION (B)(2)(I) OF
27 THIS SECTION WERE REALIZED; AND

28 (IX) AN ASSESSMENT OF WHETHER ANY COMPLETED CONTRACT
29 MET THE CRITERIA LISTED IN THE REQUEST FOR PROPOSALS OR INVITATION FOR
30 BIDS.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
32 1, 2023.