

Chapter 737

(House Bill 819)

AN ACT concerning

Procurement – Employee Stock Ownership Plan Preference – Pilot

FOR the purpose of ~~establishing a preference program for certain procurements by~~ authorizing the Maryland Stadium Authority, ~~the University System of Maryland,~~ Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College to establish a certain preference program for certain procurements; establishing authorizing the establishment of a certain price preference evaluation factor for certain bids and proposals by an entity that utilizes certain employee stock ownership plans; requiring contractors to provide certain information to a unit regarding the use of an employee stock ownership plan; and generally relating to procurement preferences for entities that utilize an employee stock ownership plan.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 11–203(c)
Annotated Code of Maryland
(2021 Replacement Volume and 2024 Supplement)

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–203(e)(1), (2), and (7)
Annotated Code of Maryland
(2021 Replacement Volume and 2024 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 11–203(e)(5)
Annotated Code of Maryland
(2021 Replacement Volume and 2024 Supplement)
(As enacted by Chapters 575 and 576 of the Acts of the General Assembly of 2023)

BY adding to
Article – State Finance and Procurement
Section 14–801 through 14–806 to be under the new subtitle “Subtitle 8. Employee Stock Ownership Plan Preference Program”
Annotated Code of Maryland
(2021 Replacement Volume and 2024 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

11–203.

(c) Except as provided in Title 12, Subtitle 4 and Title 14, [Subtitle 3] **SUBTITLES 3 AND 8** of this article and except for §§ 15–112 and 15–113 of this article, this Division II does not apply to the Maryland Stadium Authority.

(e) (1) In this subsection, “University” means the University System of Maryland, Morgan State University, or St. Mary’s College of Maryland.

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland, Morgan State University, St. Mary’s College of Maryland, or Baltimore City Community College.

(5) (i) Except as provided in paragraph (7) of this subsection, the following provisions of Division II of this article apply to a University and to Baltimore City Community College:

1. § 11–205 of this subtitle (“Collusion”);
2. § 11–205.1 of this subtitle (“Falsification, concealment, etc., of material facts”);
3. § 13–219 of this article (“Required clauses – Nondiscrimination clause”);
4. § 13–225 of this article (“Retainage”);
5. Title 14, Subtitle 3 of this article (“Minority Business Participation”);
6. Title 14, Subtitle 7 of this article (“Certified Local Farm and Fish Program”);
- ~~7. TITLE 14, SUBTITLE 8 OF THIS ARTICLE (“EMPLOYEE STOCK OWNERSHIP PLAN PREFERENCE PROGRAM”);~~
- ~~7.] 8.~~ Title 15, Subtitle 1 of this article (“Procurement Contract Administration”);
- ~~8.] 9.~~ § 15–226 of this article (“Policy established; timing of payments; notice upon nonpayment; disputes; appeals”); and

~~§ 9.1 10.~~ Title 16 of this article (“Suspension and Debarment of Contractors”).

(II) EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS SUBSECTION, TITLE 14, SUBTITLE 8 OF THIS ARTICLE (“EMPLOYEE STOCK OWNERSHIP PLAN PREFERENCE PROGRAM”) APPLIES TO MORGAN STATE UNIVERSITY, ST. MARY’S COLLEGE OF MARYLAND, AND BALTIMORE CITY COMMUNITY COLLEGE.

~~(ii)~~ **(III)** If a procurement violates the provisions of this subsection or policies adopted in accordance with this subsection, the procurement contract is void or voidable in accordance with the provisions of § 11–204 of this subtitle.

(7) Except with regard to the provisions of § 15–113 of this article, paragraphs (3), (4), and (5) of this subsection do not apply to:

(i) procurement by a University or Baltimore City Community College from:

1. another unit;
2. a political subdivision of the State;
3. an agency of a political subdivision of the State;
4. a government, including the government of another state, of the United States, or of another country;
5. an agency or political subdivision of a government; or
6. a bistate, multistate, bicounty, or multicounty governmental agency;

(ii) procurement by a University in support of enterprise activities for the purpose of:

1. direct resale;
2. remanufacture and subsequent resale; or
3. procurement by the University for overseas programs; or

(iii) procurement by the University System of Maryland for:

1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University

System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article; or

2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article.

SUBTITLE 8. EMPLOYEE STOCK OWNERSHIP PLAN PREFERENCE PROGRAM.

14–801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COVERED PROCUREMENT” MEANS A PROCUREMENT THAT IS VALUED AT LESS THAN \$80,000,000.

(C) ~~“ESOP BIDDER” MEANS A RESPONSIBLE BIDDER WHO UTILIZES AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL REVENUE CODE.~~ ESOP EVALUATION FACTOR” MEANS A PREFERENCE FOR AN ESOP OFFEROR THAT A UNIT MAY INCLUDE IN THE EVALUATION OF PROPOSALS.

(D) “ESOP OFFEROR” MEANS A RESPONSIBLE OFFEROR WHO UTILIZES AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL REVENUE CODE.

(E) ~~“NON-ESOP BIDDER” MEANS A RESPONSIBLE BIDDER WHO DOES NOT UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL REVENUE CODE.~~

(F) ~~“NON-ESOP OFFEROR” MEANS A RESPONSIBLE OFFEROR WHO DOES NOT UTILIZE AN EMPLOYEE STOCK OWNERSHIP PLAN APPROVED UNDER § 401(A) OF THE INTERNAL REVENUE CODE.~~

(G) ~~“PERCENTAGE PREFERENCE” MEANS:~~

~~(1) THE PERCENT OF THE LOWEST RESPONSIVE BID SUBMITTED BY A NON-ESOP BIDDER BY WHICH A RESPONSIVE BID SUBMITTED BY AN ESOP BIDDER MAY:~~

~~(i) EXCEED THE LOWEST BID; AND~~

~~(H) BE AWARDED A COVERED PROCUREMENT CONTRACT IN ACCORDANCE WITH THIS SUBTITLE; OR~~

~~(2) THE PERCENT OF THE LOWEST RESPONSIVE COST PROPOSAL SUBMITTED BY A NON-ESOP OFFEROR BY WHICH A RESPONSIVE PROPOSAL SUBMITTED BY AN ESOP OFFEROR MAY:~~

~~(I) EXCEED THE LOWEST COST; AND~~

~~(H) BE AWARDED A COVERED PROCUREMENT CONTRACT IN ACCORDANCE WITH THIS SUBTITLE.~~

~~(H)~~ (E) “UNIT” MEANS THE MARYLAND STADIUM AUTHORITY, A UNIVERSITY, OR THE BALTIMORE CITY COMMUNITY COLLEGE.

~~(H)~~ (F) “UNIVERSITY” MEANS ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~ MORGAN STATE UNIVERSITY, OR ST. MARY’S COLLEGE OF MARYLAND.

14-802.

THIS SUBTITLE APPLIES TO A COVERED PROCUREMENT OF:

- (1) THE MARYLAND STADIUM AUTHORITY;
- (2) A UNIVERSITY; OR
- (3) BALTIMORE CITY COMMUNITY COLLEGE.

14-803.

SUBJECT TO THE APPROVAL OF THE BOARD, EACH UNIT ~~SHALL~~ MAY ESTABLISH ~~A PERCENTAGE PREFERENCE~~ AN EVALUATION FACTOR, NOT TO EXCEED ~~5%~~ 10%.

14-804.

~~(A) A UNIT SHALL AWARD IF A UNIT AWARDS A COVERED PROCUREMENT CONTRACT USING COMPETITIVE SEALED BIDS UNDER § 13-103 OF THIS ARTICLE; THE UNIT MAY AWARD THE CONTRACT TO AN ESOP BIDDER IF THE ESOP BIDDER:~~

~~(1) SUBMITS THE LOWEST RESPONSIVE BID; OR~~

~~(2) DOES NOT SUBMIT THE LOWEST RESPONSIVE BID BUT THE DIFFERENCE BETWEEN THE BID AND THE LOWEST RESPONSIVE BID SUBMITTED BY~~

~~A NON-ESOP BIDDER DOES NOT EXCEED THE PERCENTAGE PREFERENCE ESTABLISHED UNDER § 14-803 OF THIS SUBTITLE.~~

~~(B) A UNIT SHALL AWARD IF A UNIT AWARDS A COVERED PROCUREMENT CONTRACT USING COMPETITIVE SEALED PROPOSALS UNDER § 13-104 OF THIS ARTICLE, THE UNIT MAY AWARD THE CONTRACT TO AN ESOP OFFEROR IF THE ESOP OFFEROR:~~

~~(1) SUBMITS THE RESPONSIVE PROPOSAL THAT IS MOST ADVANTAGEOUS TO THE UNIT AFTER FACTORING IN THE PRICE PREFERENCE; OR~~

~~(2) DOES NOT SUBMIT THE RESPONSIVE PROPOSAL THAT IS MOST ADVANTAGEOUS TO THE UNIT BUT THE DIFFERENCE BETWEEN THAT PROPOSAL AND THE LOWEST RESPONSIVE PROPOSAL SUBMITTED BY A NON-ESOP OFFEROR DOES NOT EXCEED THE PERCENTAGE PREFERENCE ESTABLISHED UNDER § 14-803 OF THIS SUBTITLE.~~

(A) A UNIT MAY INCLUDE AN ESOP EVALUATION FACTOR IN THE TECHNICAL EVALUATION FOR A COMPETITIVE SEALED PROPOSAL UNDER § 13-104 OF THIS ARTICLE FOR A CONTRACT SUBJECT TO THIS SUBTITLE.

(B) AN ESOP EVALUATION FACTOR MAY BE:

(1) IF A POINT SYSTEM IS USED FOR EVALUATION OF PROPOSALS, UP TO THE PERCENTAGE OF THE TOTAL ALLOCABLE TECHNICAL POINTS AUTHORIZED UNDER § 14-803 OF THIS SUBTITLE; OR

(2) IF A POINT SYSTEM IS NOT USED FOR EVALUATION OF PROPOSALS, RANKED IN ITS RELATIVE ORDER OF IMPORTANCE.

14-805.

(A) A CONTRACTOR THAT IS AWARDED A CONTRACT FOR A COVERED PROCUREMENT SHALL PROVIDE TO A UNIT, AS A CONDITION OF RECEIVING THE CONTRACT, WRITTEN VERIFICATION OF THE IRS DETERMINATION LETTER FOR THE CONTRACTOR'S EMPLOYEE STOCK OWNERSHIP PLAN.

(B) THE WRITTEN VERIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE PROVIDED BY A CONTRACTOR TO THE UNIT RESPONSIBLE FOR THE PROJECT WITH THE SUBMISSION OF A ~~BID OR~~ PROPOSAL.

14-806.

ON OR BEFORE DECEMBER 1, 2028, THE MARYLAND STADIUM AUTHORITY, BALTIMORE CITY COMMUNITY COLLEGE, ~~THE UNIVERSITY SYSTEM OF MARYLAND,~~ MORGAN STATE UNIVERSITY, AND ST. MARY'S COLLEGE OF MARYLAND SHALL SUBMIT A REPORT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, TO THE LEGISLATIVE POLICY COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, ON:

(1) THE NUMBER AND DOLLAR VALUE OF CONTRACTS AWARDED IN ACCORDANCE WITH THIS SUBTITLE TO ~~ESOP BIDDERS AND~~ ESOP OFFERORS DURING FISCAL YEARS 2026, 2027, AND 2028; AND

(2) ~~THE AMOUNT OF PRICE PREFERENCE APPLIED TO ALL CONTRACTS AWARDED IN ACCORDANCE WITH THIS SUBTITLE; AND~~

~~(3)~~ AN EVALUATION OF THE EFFECTIVENESS OF THE EMPLOYEE STOCK OWNERSHIP PLAN PREFERENCE PROGRAM.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to procurement contracts solicited on or before June 30, 2030.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2025. It shall remain effective for a period of 5 years and, at the end of June 30, 2030, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 20, 2025.