

HOUSE BILL 353

P2, P1

6lr0702

By: **Delegates Reznik, Angel, Bromwell, Hammen, Korman, Morhaim,
Pena-Melnyk, and Proctor**

Introduced and read first time: January 27, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Reorganization of State Procurement**

3 FOR the purpose of reorganizing State procurement by establishing a Chief Procurement
4 Officer to control and oversee all State procurement activity for which certain
5 provisions of law apply; repealing the definition and role of primary procurement
6 units; requiring a procurement by a unit to replace or supplement certain
7 energy-consuming equipment to be under the oversight of the Chief Procurement
8 Officer; requiring the Board of Public Works to ensure that regulations for State
9 procurement provide for procedures that are consistent with certain provisions of
10 law; authorizing the Board to require Board approval for procurement actions of
11 more than a certain dollar amount; requiring the Chief Procurement Officer to retain
12 oversight of certain procurements that are conducted under certain authority or do
13 not require certain Board approval; requiring certain actions of the Board to prevail
14 if the action conflicts with the action of certain units; repealing the position of
15 Procurement Advisor, transferring the duties of the Procurement Advisor to the
16 Chief Procurement Officer, and clarifying certain duties; requiring the Chief
17 Procurement Officer to develop regulations to implement certain provisions of law,
18 delegate control of certain procurement activities to certain units, develop certain
19 metrics and implement strategic sourcing under certain circumstances, advise the
20 General Assembly on certain legislation, manage eMaryland Marketplace,
21 coordinate with certain governmental entities and certain local entities to maximize
22 use of certain intergovernmental cooperative purchasing agreements, and employ
23 certain staff in accordance with the State budget; requiring a certain reporting
24 requirement to include a summary of certain procurement activity; requiring the
25 Chief Procurement Officer to consult with the Maryland Energy Administration
26 before issuing a request for proposals for an energy performance contract;
27 authorizing the Chief Procurement Officer to establish certain fees for eMaryland
28 Marketplace as approved by the Board; requiring a unit to make small procurements
29 in accordance with regulations developed by the Chief Procurement Officer and
30 adopted by the Board; authorizing a unit to become a party or participate in an

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 intergovernmental cooperative purchasing agreement if a certain determination is
2 made under the oversight of the Chief Procurement Officer; authorizing a unit to
3 seek bids for certain procurements by issuing an invitation for auction bids under
4 the oversight of the Chief Procurement Officer; authorizing a procurement officer to
5 award a procurement based on revised bids under certain circumstances and the
6 oversight of the Chief Procurement Officer; authorizing a unit under the oversight of
7 the Chief Procurement Officer to provide for prequalification of certain persons for
8 procurement other than leases of real property; authorizing a unit to enter into
9 multi-year contracts subject to certain regulations developed by the Chief
10 Procurement Officer and approved by the Board; requiring that multi-year contracts
11 be subject to review and approval by the Chief Procurement Officer; requiring
12 procurement contracts to include clauses covering certain termination by the State
13 if the head of a unit, under the oversight of the Chief Procurement Officer,
14 determines that termination is appropriate; authorizing a unit under the oversight
15 of the Chief Procurement Officer to withhold certain payment under certain
16 circumstances; authorizing a unit, under the oversight of the Chief Procurement
17 Officer, to conduct procurement by electronic means as provided under certain
18 provisions of law; requiring a unit to submit a certain report to the Governor and
19 General Assembly within a certain period of time each fiscal year; requiring certain
20 protests or contract claims to be submitted within a certain time required under
21 certain regulations developed by the Chief Procurement Officer and adopted by the
22 Board; repealing provisions of law requiring certain jurisdiction and control by
23 certain units over certain types of procurement; repealing provisions of law requiring
24 the adoption of certain regulations by certain units; repealing obsolete provisions of
25 law; altering certain definitions; requiring the Chief Procurement Officer to report
26 to the Governor and certain committees of the General Assembly on or before a
27 certain date; requiring the General Counsel to the Board and the Office of the
28 Attorney General to report to the Governor and certain committees of the General
29 Assembly on or before a certain date; requiring the Board and the Department of
30 Budget and Management review certain job titles, classifications, and compensation
31 for certain procurement-related positions and rename and reclassify those positions
32 for certain purposes subject to certain requirements on or before a certain date;
33 requiring the Board, in consultation with the University System of Maryland and
34 the Maryland Department of Transportation, to report to the Governor and the
35 General Assembly on certain strategies to govern procurement staff employed under
36 independent personnel management systems; requiring the Chief Procurement
37 Officer to use certain staff and transfer certain staff, subject to certain conditions,
38 to assist in carrying out certain duties; stating the intent of the General Assembly in
39 relation to procurement staff at certain State agencies; providing for a delayed
40 effective date for certain provisions of this Act; and generally relating to State
41 procurement.

42 BY repealing and reenacting, with amendments,

43 Article – State Finance and Procurement

44 Section 4-801(g), 4-804, 11-101, 12-101, 12-102, 12-105, 12-110, 12-301, 13-101,
45 13-102.1, 13-109, 13-110, 13-111, 13-204, 13-217, 13-218, 13-225, 13-226,
46 15-111, 15-216, and 15-217

1 Annotated Code of Maryland
2 (2015 Replacement Volume)

3 BY repealing
4 Article – State Finance and Procurement
5 Section 12–107 and 12–108
6 Annotated Code of Maryland
7 (2015 Replacement Volume)

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

10 **Article – State Finance and Procurement**

11 4–801.

12 (g) [“Primary procurement unit”] **“UNIT”** has the meaning provided in § 11–101
13 of this article.

14 4–804.

15 When a [primary procurement] unit replaces or supplements a major item of
16 energy-consuming equipment in an existing building owned or leased by the State, the
17 procurement of the equipment shall be made:

18 **(1)** on the basis of a life-cycle cost analysis of alternatives in accordance
19 with standards established under § 4–808 of this subtitle; **AND**

20 **(2) UNDER THE OVERSIGHT OF THE CHIEF PROCUREMENT OFFICER.**

21 11–101.

22 (a) In this Division II the following words have the meanings indicated unless:

23 (1) the context clearly requires a different meaning; or

24 (2) a different definition is provided for a particular title or provision.

25 (b) (1) “Architectural services” means professional or creative work that:

26 (i) is performed in connection with the design and supervision of
27 construction or landscaping; and

28 (ii) requires architectural education, training, and experience.

1 (2) “Architectural services” includes consultation, research, investigation,
2 evaluation, planning, architectural design and preparation of related documents, and
3 coordination of services that structural, civil, mechanical, and electrical engineers and
4 other consultants provide.

5 (3) “Architectural services” does not include construction inspection
6 services, services provided in connection with an energy performance contract, or
7 structural, mechanical, plumbing, or electrical engineering.

8 (c) “Bid” means a response to an invitation for bids under § 13–103 of this article.

9 (d) “Board” means the Board of Public Works.

10 **(E) “CHIEF PROCUREMENT OFFICER” MEANS THE INDIVIDUAL APPOINTED**
11 **BY THE BOARD UNDER § 12–102 OF THIS ARTICLE.**

12 **[(e)](F)** (1) “Construction” means the process of building, altering,
13 improving, or demolishing an improvement to real property.

14 (2) “Construction” includes any major work necessary to repair, prevent
15 damage to, or sustain existing components of an improvement to real property.

16 (3) “Construction” does not include the maintenance or routine operation
17 of an existing improvement to real property, or activities related to an energy performance
18 contract.

19 **[(f)](G)** (1) “Construction related services” means feasibility studies,
20 surveys, construction management, construction inspection, and similar efforts associated
21 with construction or the acquisition of public improvements as defined in § 4–401(d) of this
22 article.

23 (2) “Construction related services” does not include services provided in
24 connection with an energy performance contract.

25 **[(g)](H)** “County” means a county of the State and, unless expressly provided
26 otherwise, Baltimore City.

27 **[(h)](I)** “Energy performance contract” means an agreement for the provision
28 of energy services, including electricity, heating, ventilation, cooling, steam, or hot water,
29 in which a person agrees to design, install, finance, maintain, or manage energy systems
30 or equipment to improve the energy efficiency of a building or facility in exchange for a
31 portion of the energy savings.

32 **[(i)](J)** (1) “Engineering services” means professional or creative work that:

1 (i) is performed in connection with any utility, structure, building,
2 machine, equipment, or process, including structural, mechanical, plumbing, electrical,
3 geotechnical, and environmental engineering; and

4 (ii) requires engineering education, training, and experience in the
5 application of special knowledge of the mathematical, physical, and engineering sciences.

6 (2) “Engineering services” includes consultation, investigation, evaluation,
7 planning, design, and inspection of construction to interpret and ensure compliance with
8 specifications and design within the scope of inspection services.

9 (3) “Engineering services” does not include services provided in connection
10 with an energy performance contract.

11 ~~[(j)]~~**(K)** “Invitation for bids” means any document used for soliciting bids under
12 § 13–103 of this article.

13 ~~[(k)]~~**(L)** “Person” means an individual, receiver, trustee, guardian, personal
14 representative, fiduciary, or representative of any kind and any partnership, firm,
15 association, corporation, or other entity.

16 **[(l)** “Primary procurement units” means:

- 17 (1) the State Treasurer;
- 18 (2) the Department of Budget and Management;
- 19 (3) the Department of General Services;
- 20 (4) the Department of Transportation;
- 21 (5) the Department of Information Technology;
- 22 (6) the University System of Maryland;
- 23 (7) the Maryland Port Commission;
- 24 (8) the Department of Public Safety and Correctional Services;
- 25 (9) the Morgan State University; and
- 26 (10) the St. Mary’s College of Maryland.]

27 **(m)** (1) “Procurement” means the process of:

- 28 (i) leasing real or personal property as lessee; or

1 (ii) buying or otherwise obtaining supplies, services, construction,
2 construction related services, architectural services, engineering services, or services
3 provided under an energy performance contract.

4 (2) "Procurement" includes the solicitation and award of procurement
5 contracts and all phases of procurement contract administration.

6 (n) (1) "Procurement contract" means an agreement in any form entered into
7 by a unit for procurement.

8 (2) "Procurement contract" does not include:

9 (i) a collective bargaining agreement with an employee
10 organization;

11 (ii) an agreement with a contractual employee, as defined in §
12 1–101(d) of the State Personnel and Pensions Article;

13 (iii) a Medicaid, Judicare, or similar reimbursement contract for
14 which law sets:

15 1. user or recipient eligibility; and

16 2. price payable by the State; or

17 (iv) a Medicaid contract with a managed care organization, as
18 defined in § 15–101(e) of the Health – General Article as to which regulations adopted by
19 the Department establish:

20 1. recipient eligibility;

21 2. minimum qualifications for managed care organizations;

22 and

23 3. criteria for enrolling recipients in managed care
24 organizations.

25 (o) "Procurement officer" means an individual authorized by a unit to:

26 (1) enter into a procurement contract;

27 (2) administer a procurement contract; or

28 (3) make determinations and findings with respect to a procurement
29 contract.

1 (p) "Proposal" means a response to any solicitation other than an invitation for
2 bids.

3 (q) "Request for proposals" means any document used for soliciting proposals.

4 (r) "Responsible bidder or offeror" means a person who:

5 (1) has the capability in all respects to perform fully the requirements for
6 a procurement contract; and

7 (2) possesses the integrity and reliability that will ensure good faith
8 performance.

9 (s) "Responsive bid" means a bid that:

10 (1) is submitted under § 13–103 of this article; and

11 (2) conforms in all material respects to the invitation for bids.

12 (t) (1) Except as provided in paragraph (3) of this subsection, "services"
13 means:

14 (i) the labor, time, or effort of a contractor; and

15 (ii) any product or report necessarily associated with the rendering
16 of a service.

17 (2) "Services" includes services provided by attorneys, accountants,
18 physicians, consultants, and other professionals who are independent contractors.

19 (3) "Services" does not include:

20 (i) construction related services;

21 (ii) architectural services;

22 (iii) engineering services; or

23 (iv) energy performance contract services.

24 (u) "State" means:

25 (1) a state, possession, territory, or commonwealth of the United States; or

26 (2) the District of Columbia.

1 (v) (1) "State correctional facilities" means correctional institutions, and all
2 places of correctional confinement, that are located within the State of Maryland and are
3 primarily operated by the Maryland State government.

4 (2) "State correctional facilities" includes Patuxent Institution.

5 (w) (1) "Supplies" means:

6 (i) insurance;

7 (ii) tangible personal property;

8 (iii) printing; and

9 (iv) services necessarily associated with insurance or tangible
10 personal property.

11 (2) "Supplies" does not include:

12 (i) an interest in real property; or

13 (ii) tangible personal property acquired or used in connection with
14 an energy performance contract.

15 (x) (1) "Unit" means an officer or other entity that is in the Executive Branch
16 of the State government and is authorized by law to enter into a procurement contract.

17 (2) "Unit" does not include:

18 (i) a bistate, multistate, bicounty, or multicounty governmental
19 agency; or

20 (ii) a special tax district, sanitary district, drainage district, soil
21 conservation district, water supply district, or other political subdivision of the State.

22 12-101.

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

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

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

28 (i) set policy;

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

3 (iii) establish internal operational procedures consistent with this
4 Division II.

5 (3) The Board shall ensure that the regulations [of the primary] **FOR**
6 **STATE** procurement [units] provide for procedures that are consistent with this Division
7 II and Title 13, Subtitle 4 of the State Personnel and Pensions Article and, to the extent
8 the circumstances of a particular type of procurement or a particular unit do not require
9 otherwise, are substantially the same.

10 (4) The Board may:

11 (I) delegate any of its authority that it determines to be appropriate
12 for delegation; and [may]

13 (II) require prior Board approval for [specified] procurement actions
14 **OF \$500,000 OR MORE.**

15 **(5) THE CHIEF PROCUREMENT OFFICER SHALL RETAIN OVERSIGHT**
16 **OF A PROCUREMENT:**

17 (I) **CONDUCTED UNDER AUTHORITY DELEGATED IN**
18 **ACCORDANCE WITH PARAGRAPH (4)(I) OF THIS SUBSECTION; OR**

19 (II) **THAT DOES NOT REQUIRE BOARD APPROVAL UNDER**
20 **PARAGRAPH (4)(II) OF THIS SUBSECTION.**

21 **[(5)](6)** Except as limited by the Maryland Constitution **OR ANOTHER**
22 **PROVISION OF LAW**, the Board may exercise any control authority conferred on a [primary
23 procurement] unit by this Division II and, to the extent that its action conflicts with the
24 action of the [primary procurement] unit, the action of the Board shall prevail.

25 **[(6)](7)** The Board, with the assistance of the Department of Budget and
26 Management, shall compile comprehensive statistics on the procurement system by agency,
27 amount, and type of procurement.

28 **[(7)](8)** The Board shall develop and submit to the General Assembly, in
29 accordance with § 2–1246 of the State Government Article, an annual report on the
30 procurement system that includes information on actions necessary to improve effective
31 broad-based competition in procurement.

32 12–102.

1 (a) (1) The Board shall appoint a **CHIEF Procurement [Advisor] OFFICER,**
2 who serves at the pleasure of the Board.

3 (2) The **CHIEF Procurement [Advisor] OFFICER** shall:

4 (i) **CONTROL AND OVERSEE ALL STATE PROCUREMENT**
5 **ACTIVITY FOR WHICH THIS DIVISION II APPLIES;**

6 (ii) ensure that the State's procurement system is utilizing the most
7 advanced procurement methods and management techniques, **INCLUDING POLICIES,**
8 **PROCEDURES, AND FORMS FOR ALL PROCUREMENT ACTIVITY AND CONTRACT**
9 **MANAGEMENT;**

10 (iii) **DEVELOP REGULATIONS TO IMPLEMENT THE PROVISIONS**
11 **OF THIS DIVISION II FOR ADOPTION BY THE BOARD UNDER § 12-101(B)(2)(II) OF**
12 **THIS SUBTITLE;**

13 (iv) **WHILE RETAINING OVERSIGHT, DELEGATE CONTROL OF**
14 **PROCUREMENT ACTIVITY TO UNITS WITH EXPERTISE IN SPECIFIED TYPES OF**
15 **PROCUREMENT;**

16 (v) **DEVELOP PERFORMANCE METRICS FOR STATE**
17 **PROCUREMENT AND IMPLEMENT STRATEGIC SOURCING WHEN APPROPRIATE;**

18 ~~[(ii)]~~(vi) effect and enhance communication between State units on
19 procurement matters, with an emphasis on disseminating information on current
20 developments and advances in the management of the State procurement system;

21 ~~[(iii)]~~(vii) examine all procurements that are subject to review by the
22 Board and make recommendations to the Board as to the appropriateness of each
23 procurement, with an emphasis on whether the proposed procurement:

24 1. has been competitively conducted; and

25 2. conforms to provisions of procurement law, procurement
26 regulations, and best management practices;

27 ~~[(iv)]~~(viii) prevent and detect fraud, waste, and abuse and foster
28 competition in the expenditure of State funds in the procurement of supplies, services, or
29 construction;

30 ~~[(v)]~~(ix) conduct investigations into procurement policies,
31 practices, and procedures, as appropriate;

1 [(vi)](X) investigate complaints made by State employees
2 concerning fraud, waste, and abuse in the procurement process and any alleged violation
3 of the procurement law or regulations;

4 [(vii)](XI) investigate complaints, other than formal bid protests
5 filed under Title 15, Subtitle 2 of this article, made by contractors and other interested
6 parties concerning fraud, waste, and abuse in the procurement process and any alleged
7 violation of the procurement law or regulations;

8 [(viii)](XII) if apparent criminal violations are found in the course of
9 an investigation, report findings to the Board of Public Works, Office of the Attorney
10 General, United States Attorney, and State or local prosecutors, as appropriate;

11 [(ix)](XIII) if other apparent violations of law or regulation are found
12 in the course of an investigation, report findings to the Board of Public Works, the
13 appropriate agency head, and any other appropriate body for administrative action;

14 [(x)](XIV) produce and submit to the Board of Public Works and the
15 General Assembly, in accordance with § 2–1246 of the State Government Article, an annual
16 report of the activities of the **CHIEF Procurement [Advisor] OFFICER**, including:

17 1. all findings and recommendations for improvements to the
18 procurement system; [and]

19 2. the identification of barriers to effective broad-based
20 competition in State procurement and recommendations for the elimination of these
21 barriers; **AND**

22 **3. A SUMMARY AND DESCRIPTION OF ALL**
23 **PROCUREMENT ACTIVITY CONDUCTED BY UNITS DURING THE PRECEDING FISCAL**
24 **YEAR;**

25 [(xi)](XV) assist agencies and the public with questions regarding
26 procurement policy;

27 [(xii)](XVI) establish policies for the effective training of State
28 procurement officials to ensure that the State's procurement system is utilizing the most
29 advanced procurement methods and management techniques;

30 [(xiii)](XVII) coordinate activities with other entities performing
31 similar functions;

32 [(xiv)](XVIII) review internal audit reports and comment as
33 appropriate;

1 [(xv)] **(XIX)** be the principal staff to the Procurement Advisory
2 Council; [and]

3 [(xvi)] **(XX)** notify the Legislative Auditor when the **CHIEF**
4 Procurement [Advisor] **OFFICER** undertakes an investigation under item [(vi)] **(X)** or
5 [(vii)] **(XI)** of this paragraph;

6 **(XXI) ADVISE THE GENERAL ASSEMBLY ON PROPOSED**
7 **LEGISLATION IN ORDER TO ENHANCE THE EFFICIENCY AND TRANSPARENCY OF**
8 **STATE PROCUREMENT;**

9 **(XXII) MANAGE E****MARYLAND MARKETPLACE;**

10 **(XXIII) COORDINATE WITH GOVERNMENTAL ENTITIES AND**
11 **LOCAL ENTITIES TO MAXIMIZE USE OF INTERGOVERNMENTAL PURCHASING**
12 **AGREEMENTS ESTABLISHED IN ACCORDANCE WITH § 13-110 OF THIS ARTICLE; AND**

13 **(XXIV) EMPLOY A STAFF AND SUPERVISE STATE**
14 **PROCUREMENT ON PROCUREMENT MATTERS IN ACCORDANCE WITH THE STATE**
15 **BUDGET TO ASSIST IN CARRYING OUT THE DUTIES OF THE CHIEF PROCUREMENT**
16 **OFFICER.**

17 (3) The **CHIEF** Procurement [Advisor] **OFFICER** shall:

18 (i) have access to all books, accounts, records, reports, any material
19 related to contracts and procurement, and all other papers and equipment necessary to
20 carry out its responsibilities; and

21 (ii) have direct and prompt access to all heads of agencies involved
22 in the expenditure of public funds.

23 (b) (1) (i) The Board shall appoint a General Counsel, who serves at the
24 pleasure of the Board.

25 (ii) The General Counsel shall be an attorney in this State.

26 (2) The General Counsel shall:

27 (i) provide independent legal advice to the Board;

28 (ii) examine all procurements that are subject to review by the Board
29 and make recommendations to the Board as to the legal sufficiency of the procurements,
30 with an emphasis on whether the proposed procurement has been competitively conducted;

1 (iii) assist the **CHIEF** Procurement [Advisor] **OFFICER** in
2 investigations undertaken by the **CHIEF** Procurement [Advisor] **OFFICER**;

3 (iv) assist the **CHIEF** Procurement [Advisor] **OFFICER** in
4 responding to complaints made by State employees, contractors, and other interested
5 parties concerning fraud, waste, and abuse in the procurement process or any alleged
6 violation of the procurement law and regulations;

7 (v) compile information for distribution to State procurement
8 officials relating to recent decisions of the Maryland State Board of Contract Appeals and
9 State and federal courts concerning procurement, including any policy or legal guidance to
10 the procurement officials based on these decisions; and

11 (vi) review regulations proposed by the Board for legality and
12 approve them for proposal and adoption.

13 (3) The General Counsel shall:

14 (i) have access to all books, accounts, records, any material related
15 to contracts and procurement, and all other papers and equipment necessary to carry out
16 its responsibilities; and

17 (ii) have direct and prompt access to all heads of agencies involved
18 in the expenditure of public funds.

19 (c) In accordance with the State budget, the Board may appoint any additional
20 staff necessary to carry out its responsibilities under this Division II.

21 12–105.

22 (a) In this section, “Council” means the Procurement Advisory Council.

23 (b) There is a Procurement Advisory Council.

24 (c) (1) The Council consists of the following 11 members:

25 (i) the State Treasurer;

26 (ii) the Chancellor of the University System of Maryland;

27 (iii) the Secretary of Budget and Management;

28 (iv) the Secretary of General Services;

29 (v) the Secretary of Information Technology;

30 (vi) the Secretary of Transportation;

1 (vii) the Secretary of the Board;

2 (viii) the Special Secretary for the Office of Minority Affairs;

3 (ix) a representative of local government who has expertise in local
4 procurement matters, appointed by the Governor with the advice and consent of the Senate;
5 and

6 (x) two members of the general public, at least one of whom has
7 expertise in State procurement matters, appointed by the Governor with the advice and
8 consent of the Senate.

9 (2) (i) If the State Treasurer is unable to attend a meeting of the
10 Procurement Advisory Council, the Treasurer may designate the Deputy Treasurer to
11 attend the meeting.

12 (ii) If a member of the Council listed in paragraph (1)(ii) through (v)
13 of this subsection is unable to attend a meeting of the Procurement Advisory Council, the
14 member may designate the Chief Procurement Officer of the agency to attend the meeting.

15 (d) The Secretary of the Board is Chairman of the Council.

16 (e) The Council shall meet at least quarterly each year.

17 (f) The **CHIEF** Procurement [Advisor] **OFFICER** is the principal staff of the
18 Council and the Council shall have any additional staff that the Board authorizes in
19 accordance with the State budget.

20 (g) The Council shall:

21 (1) ensure that the State's procurement system is utilizing the most
22 advanced procurement methods and management techniques;

23 (2) effect and enhance communication between State units on procurement
24 matters, with an emphasis on disseminating information on current developments and
25 advances in procurement methods and management;

26 (3) provide a forum for the discussion of specific procurement issues and
27 problems that arise;

28 (4) advise the Board on problems in the procurement process and make
29 recommendations for improvement of the process; and

30 (5) review existing procurement regulations to:

1 (i) determine whether they fulfill the intent and purpose of the law,
2 especially as it relates to fostering broad-based competition; and

3 (ii) make recommendations on the regulations, if revising and
4 restructuring them will result in easier understanding and use.

5 [12–107.

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

9 (b) Subject to the authority of the Board, jurisdiction over procurement is as
10 follows:

11 (1) the State Treasurer may engage in or control procurement of banking
12 and financial services, insurance, and insurance services, as provided in Division I of this
13 article and Article VI, § 3 of the Maryland Constitution;

14 (2) the Department of Budget and Management may control procurement
15 of:

16 (i) services by a unit, subject to any limitation in this Division II;
17 and

18 (ii) leases of motor vehicles, as provided in Title 3, Subtitle 5 of this
19 article;

20 (3) the Department of General Services may engage in or control
21 procurement of:

22 (i) leases of real property, including leases under Title 4, Subtitle 3
23 of this article;

24 (ii) supplies, including supplies under Title 4, Subtitle 3 of this
25 article, but excluding insurance, information processing equipment, and motor vehicle
26 leases;

27 (iii) construction, including construction under Title 4, Subtitle 4 of
28 this article;

29 (iv) construction related services, including those under Title 4,
30 Subtitle 4 of this article; and

31 (v) architectural or engineering services under Title 13, Subtitle 3 of
32 this article;

1 (4) the Department of Transportation and the Maryland Transportation
2 Authority, without the approval of any of the other primary procurement units, may engage
3 in the procurement of:

4 (i) construction that is related to transportation, as provided in the
5 Transportation Article;

6 (ii) construction related services that are related to transportation,
7 as provided in the Transportation Article;

8 (iii) architectural or engineering services that are related to
9 transportation, under Title 13, Subtitle 3 of this article;

10 (iv) rolling stock and other property peculiar to the operation of a
11 transit system, as provided in § 7-403 of the Transportation Article;

12 (v) supplies for aeronautics related activities, including motor
13 vehicles and information processing supplies, but excluding:

14 1. supplies funded by the proceeds from State general
15 obligation bonds; and

16 2. insurance; and

17 (vi) services for aeronautics related activities, including information
18 processing services, but excluding banking and financial services under the authority of the
19 State Treasurer under item (1) of this subsection;

20 (5) the Maryland Port Commission, without the approval of any of the
21 other primary procurement units, may engage in the procurement of:

22 (i) supplies for port related activities, including motor vehicles and
23 information processing supplies, but excluding:

24 1. supplies funded by the proceeds from State general
25 obligation bonds; and

26 2. insurance;

27 (ii) services for port related activities, including information
28 processing services, but excluding banking and financial services under the authority of the
29 State Treasurer under item (1) of this subsection;

30 (iii) construction and construction related services for a port facility
31 as defined in § 6-101(e) of the Transportation Article;

1 (iv) port related architectural and engineering services under Title
2 13, Subtitle 3 of this article; and

3 (v) leases of real property for port related activities unless the lease
4 payments are from the General Fund of the State;

5 (6) the Department of Public Safety and Correctional Services may,
6 without the approval of any of the other primary procurement units:

7 (i) engage in the procurement of construction and construction
8 related services for State correctional facilities; and

9 (ii) engage in the procurement of supplies, materials, and equipment
10 in support of construction and construction related services for State correctional facilities
11 in accordance with this Division II and Title 2 and Title 10, Subtitle 1 of the Correctional
12 Services Article; and

13 (7) the Department of Information Technology may control procurement of:

14 (i) information processing equipment and associated services, as
15 provided in Title 3A, Subtitle 3 of this article; and

16 (ii) telecommunication equipment, systems, or services, as provided
17 in Title 3A, Subtitle 4 of this article.]

18 [12–108.

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 roads,
21 bridges, or highways, as provided in § 12–202 of this title.

22 (b) Subject to the approval of the Board and under the coordination of the
23 Governor, each of the primary procurement units shall:

24 (1) adopt regulations to carry out this Division II;

25 (2) send to the Board a copy of each proposed regulation under item (1) of
26 this subsection; and

27 (3) send to the Board a copy of each internal operating procedure that the
28 primary procurement unit adopts.]

29 12–110.

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

1 (2) “Council” means the Council for the Procurement of Health,
2 Educational, and Social Services.

3 (3) “Health, educational, and social services” means services procured to
4 provide or assist in providing:

5 (i) support, care, or shelter to third-party clients under a contract;
6 or

7 (ii) training to third-party clients under a contract.

8 (4) “Task Force Report” means the report entitled “Task Force Report to
9 the Governor and the General Assembly on Procurement of Health, Education and Social
10 Services by State Agencies” that was issued on November 30, 2011, by the Task Force to
11 Study the Procurement of Health, Education, and Social Services by State Agencies.

12 (b) There is a Council for the Procurement of Health, Educational, and Social
13 Services.

14 (c) (1) The Council consists of the following members:

15 (i) the State Treasurer;

16 (ii) the Attorney General;

17 (iii) the **CHIEF** Procurement [Advisor] **OFFICER**;

18 (iv) the State Superintendent of Schools;

19 (v) the Secretary of Budget and Management;

20 (vi) the Secretary of Juvenile Services;

21 (vii) the Secretary of Human Resources;

22 (viii) the Secretary of Health and Mental Hygiene;

23 (ix) the Director of the Governor’s Grants Office;

24 (x) the Executive Director of the Governor’s Office of Crime Control
25 and Prevention;

26 (xi) the Executive Director of the Governor’s Office for Children;

27 (xii) the Special Secretary for the Office of Minority Affairs;

1 (xiii) four representatives of private organizations with experience
2 providing human services funded by contracts through State units, appointed by the
3 Governor;

4 (xiv) a member of the Senate, appointed by the President of the
5 Senate; and

6 (xv) a member of the House of Delegates, appointed by the Speaker
7 of the House.

8 (2) (i) If the State Treasurer is unable to attend a meeting of the
9 Council, the Treasurer may designate a Deputy Treasurer to attend the meeting.

10 (ii) If a member of the Council listed in paragraph (1)(ii) through (xii)
11 of this subsection is unable to attend a meeting of the Council, the member may designate
12 the Chief Procurement Officer or another senior management staff member of the agency
13 or organization to attend the meeting.

14 (3) (i) This paragraph applies to members of the Council appointed
15 under paragraph (1)(xiii) of this subsection.

16 (ii) On or after July 1, 2014, the term of a member is 4 years.

17 (iii) The terms of members are staggered as required by the terms
18 provided for members of the Council on July 1, 2014.

19 (iv) At the end of a term, a member continues to serve until a
20 successor is appointed and qualifies.

21 (v) A member who is appointed after a term has begun serves only
22 for the rest of the term and until a successor is appointed and qualifies.

23 (vi) A member may not serve more than two consecutive terms,
24 except that a member appointed before July 1, 2014, may serve one additional 4-year term
25 when the member's current term expires.

26 (vii) The Governor may remove a member for neglect of duty,
27 incompetence, or misconduct.

28 (d) The **CHIEF** Procurement [Advisor] **OFFICER** is the Chair of the Council.

29 (e) The Council shall meet at least twice each year.

30 (f) The staffing responsibilities of the Council shall be shared by:

31 (1) the agencies represented on the Council; and

1 (2) additional staff that the Board authorizes in accordance with the State
2 budget.

3 (g) The Council shall:

4 (1) advise the Board on specific steps necessary to implement the
5 recommendations of the Task Force Report;

6 (2) monitor and report to the Board the progress of implementation of the
7 recommendations in the Task Force Report;

8 (3) establish subcommittees or working committees consisting of members
9 of the Council and interested parties to address or study specific issues;

10 (4) with regard to the procurement of health, educational, and social
11 services:

12 (i) effect and enhance communication between State units on
13 procurement matters, with an emphasis on disseminating information on current
14 developments and advances in procurement methods and management;

15 (ii) provide a forum for the discussion of specific procurement issues
16 and problems that arise;

17 (iii) advise the Board on problems in the procurement process and
18 make recommendations for improvement to the procurement process; and

19 (iv) review existing procurement regulations to determine whether
20 they fulfill the intent and purpose of the law, especially as the law relates to fostering
21 broad-based competition and making effective use of State funds for the delivery of health,
22 educational, and social services; and

23 (5) on or before December 31 of each year, report to the General Assembly,
24 in accordance with § 2-1246 of the State Government Article, on the Council's activities
25 and recommendations regarding the procurement of health, educational, and social services
26 by State agencies.

27 12-301.

28 (a) (1) Before issuing a request for proposals for an energy performance
29 contract, [a primary procurement unit] **THE CHIEF PROCUREMENT OFFICER** shall
30 consult with the Maryland Energy Administration.

31 (2) The Maryland Energy Administration shall review the proposed
32 request to ensure that it meets with the State energy standards, preserves the State's
33 flexibility to investigate and use economically justifiable new technologies, and is in

1 conformance with the unit's energy conservation plan that has been developed in
2 accordance with § 4-806 of this article.

3 (b) (1) Notwithstanding any other provision of law and subject to the approval
4 and control of the Board of Public Works **AND THE CHIEF PROCUREMENT OFFICER**, a
5 [primary procurement] unit of State government is authorized to enter into energy
6 performance contracts of up to 15 years' duration.

7 (2) The Treasurer may enter into a capital lease to finance energy
8 performance contracts as provided in Title 8, Subtitle 4 of this article.

9 (3) The payments and the total contract amount due under an energy
10 performance contract or, in the case of a capital lease used to finance energy performance
11 contracts, the capital lease payments may not exceed the actual energy savings realized as
12 a result of the contract's performance.

13 (4) (i) Before approval of an energy performance contract, the Board:

14 1. shall ensure that the projected annual energy savings
15 attributable to the project will exceed the projected annual capital lease payments or
16 payments to the contractor under the contract; and

17 2. based on the review of the Maryland Energy
18 Administration, shall determine whether the proposed energy technology is appropriate for
19 the time period provided in the contract.

20 (ii) The Board may:

21 1. authorize the use of incentive contracts, including
22 contracts that guarantee energy savings performance; and

23 2. require prospective contractors to furnish appropriate
24 guarantees to ensure that projected savings are realized.

25 (iii) Any guarantees required under subparagraph (ii) of this
26 paragraph may include a requirement that the contractor furnish a bond or other assurance
27 to the State in an appropriate amount to guarantee projected performance and that the
28 bond or other assurance be structured so that a failure to meet guaranteed performance
29 savings will forfeit a portion of the bond or other assurance to match the shortfall in energy
30 savings.

31 13-101.

32 (a) In this subtitle the following words have the meanings indicated.

33 (b) "eMaryland Marketplace" means the Internet-based procurement system
34 managed by the [Department of General Services] **CHIEF PROCUREMENT OFFICER**.

1 (c) “Evaluated bid price” means the price of a bid after adjustment in accordance
2 with objective measurable criteria.

3 (d) (1) “Objective measurable criteria” means standards that enable the State
4 to compare the economy, effectiveness, or value of the subject of the bids.

5 (2) “Objective measurable criteria” includes standards of reliability,
6 operational costs, maintainability, useful life, and residual value.

7 13–102.1.

8 (a) A unit may not charge a fee to access eMaryland Marketplace.

9 (b) (1) [The Department of Budget and Management] **AS APPROVED BY THE**
10 **BOARD OF PUBLIC WORKS, THE CHIEF PROCUREMENT OFFICER** may establish fees
11 for the use of eMaryland Marketplace by an entity that publishes a notice of a procurement,
12 conducts a procurement, or publishes a notice of award.

13 (2) The [Department of Budget and Management] **CHIEF**
14 **PROCUREMENT OFFICER** may not charge a unit, as defined in § 11–101(x) of this article,
15 a fee under this subsection.

16 13–109.

17 (a) In this section, “small procurement” means a procurement for which:

18 (1) a unit spends \$25,000 or less;

19 (2) a contractor provides services subject to § 11–202(3) of this article for
20 expected annual revenues of \$25,000 or less; or

21 (3) the Department of General Services is seeking to award a procurement
22 contract for a construction with a value that is \$50,000 or less.

23 (b) A unit may make small procurements in accordance with [the] regulations [of
24 primary procurement units] **DEVELOPED BY THE CHIEF PROCUREMENT OFFICER AND**
25 **ADOPTED BY THE BOARD.**

26 (c) A [primary procurement] unit may not create a small procurement by
27 artificial division of a procurement.

28 (d) Any regulation [of a primary procurement unit to govern] **DEVELOPED BY**
29 **THE CHIEF PROCUREMENT OFFICER FOR** small procurements:

30 (1) shall provide for a simplified administrative procedure;

1 (2) shall be consistent with the basic intent of this Division II; and

2 (3) may not be disadvantageous economically to the State.

3 (e) At least every 3 years, the Board shall:

4 (1) review the prevailing costs of labor and materials; and

5 (2) if warranted by changes in cost, recommend to the General Assembly
6 appropriate adjustments in the ceiling for a small procurement.

7 13–110.

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

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

11 (3) “Governmental entity” means:

12 (i) the federal government or an agency or other instrumentality of
13 the federal government;

14 (ii) another state or an agency or other instrumentality of another
15 state;

16 (iii) a bistate or multistate agency;

17 (iv) a county, municipal corporation, or other political subdivision of
18 the State or of another state, or an agency or other instrumentality of the political
19 subdivision;

20 (v) a bicounty or multicounty agency;

21 (vi) a [primary procurement] unit; or

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

25 (4) “Intergovernmental cooperative purchasing agreement” means a
26 contract:

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

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

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

6 (ii) between a [primary procurement] unit and a person who, at the
7 time the intergovernmental cooperative purchasing agreement is awarded, has a contract
8 with the federal government or an agency or other instrumentality of the federal
9 government, and who agrees to provide the unit with identical prices, terms, and conditions
10 as stipulated in the federal contract.

11 (5) (i) “Local entity” means a county, municipal corporation, bicounty
12 or multicounty agency, public authority, special taxing district, or other political
13 subdivision or unit of a political subdivision of this State.

14 (ii) “Local entity” includes boards of education and library boards
15 that receive funding from the State.

16 (6) “Not-for-profit entity” means a corporation incorporated in the State,
17 or otherwise qualified to do business in the State that has been determined by the Internal
18 Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal
19 Revenue Code.

20 (7) “State entity” means a department, board, commission, agency, or a
21 subunit in the Executive branch of State government.

22 (b) (1) Subject to § 12–107 of this article, whenever a [primary procurement
23 unit] procurement officer **OF A UNIT** determines that it is in the best interest of the State
24 to sponsor or participate in an intergovernmental cooperative purchasing agreement, with
25 the approval of the unit head, **OVERSIGHT BY THE CHIEF PROCUREMENT OFFICER**,
26 and subject to any other approval required by law, the [primary procurement] unit may
27 become a party to or participate under the agreement.

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

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

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

33 (3) If a [primary procurement] unit sponsors an intergovernmental
34 cooperative purchasing agreement:

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

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

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

9 (c) (1) Except as provided in paragraph (2) of this subsection, each
10 procurement contract for supplies or services entered into by a State or local entity shall
11 include a provision that facilitates other State and local entities and not-for-profit entities
12 to participate in the contract.

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

14 1. a procurement for a capital facility, improvement, or other
15 unique purchase; or

16 2. a procurement with a projected value of less than
17 \$100,000.

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

20 1. undermine the desired timing or effect of the procurement;

21 2. interfere with the State or local entity's ability to meet:

22 A. the minority business enterprise goals provided under §
23 14-302 of this article or any other minority business enterprise program sponsored by the
24 local entity; or

25 B. the Small Business Reserve Program requirements under
26 § 14-502 of this article or any other small business procurement program sponsored by the
27 local entity; or

28 3. not be in the best interest of the entity.

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

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

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

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

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

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

13 13–111.

14 (a) This section applies to the procurement of supplies, with an estimated contract
15 value of \$1,000,000 or more, by a [primary procurement] unit.

16 (b) (1) Whenever the head of a [primary procurement] unit or designee
17 determines that it is in the best interest of the State for a procurement contract to be based
18 on auction bids, a procurement officer shall seek bids by issuing an invitation for auction
19 bids **UNDER THE OVERSIGHT OF THE CHIEF PROCUREMENT OFFICER.**

20 (2) Subject to subsection (c) of this section, an invitation for auction bids
21 shall include:

22 (i) the specifications of the procurement contract;

23 (ii) whether the procurement contract will be awarded based on the
24 lowest bid price or the lowest evaluated bid price;

25 (iii) if the procurement contract will be based on evaluated bid price,
26 the objective measurable criteria by which the lowest evaluated bid price will be
27 determined;

28 (iv) the small business preference, if designated under § 13–103 of
29 this subtitle; and

30 (v) the date and time when bidding will commence and the date and
31 time when bidding will end or the event upon which bidding will end.

32 (c) (1) In the discretion of the procurement officer, the invitation for auction
33 bids may:

1 (i) include a request for unpriced technical offers or samples;

2 (ii) direct bidders to submit price bids after the unit evaluates the
3 technical offers or samples and finds they are acceptable under the criteria set forth in the
4 invitation for auction bids; and

5 (iii) inform all bidders who submitted technical offers or samples of
6 the identity of each bidder who submitted an acceptable technical offer or sample.

7 (2) Price bids may not be received until after the unit has completed
8 evaluation of the technical offers or samples.

9 (3) A price bid may not be received at any time if the bid is submitted by a
10 bidder whose technical offer or sample has been evaluated as unacceptable to the unit.

11 (d) A unit shall give public notice of an invitation for auction bids in the same
12 manner as required for an invitation for bids.

13 (e) (1) (i) Multiple price bids are permitted in response to an invitation for
14 auction bids.

15 (ii) When a bidder submits multiple bids, each bid shall be judged
16 independently and shall not revoke previous bids of that bidder.

17 (2) A procurement officer shall:

18 (i) receive bids in public at the time and place designated in the
19 invitation for auction bids; and

20 (ii) record and post the amount of each bid at the time it is received.

21 (3) (i) The amount of a price bid shall be available for public inspection
22 from the time it is received.

23 (ii) The identity of the bidder submitting a price bid shall not be
24 available for public inspection until bidding has ended.

25 (4) Except as provided in paragraph (5) of this subsection, a bid is
26 irrevocable, after receipt, for the period specified in the invitation for auction bids.

27 (5) A procurement officer may allow a bidder to correct or withdraw a bid
28 if correction or withdrawal is:

29 (i) allowed under regulations adopted under this Division II
30 applicable to an invitation for bids; and

1 (ii) approved in writing by the Office of the Attorney General.

2 (f) (1) After obtaining any approval required by law, the procurement officer
3 shall award the procurement contract to the responsible bidder who submits the responsive
4 bid that:

5 (i) is the lowest bid price; or

6 (ii) if the invitation for auction bids so provides, is the lowest
7 evaluated bid price.

8 (2) If, after bids have been received, a procurement officer determines that
9 only one responsible bidder has submitted a responsive bid, the unit may negotiate the
10 procurement contract with that one bidder under the procedure for sole source
11 procurement.

12 (3) (i) After bids have been received, a procurement officer may award
13 a procurement contract on the basis of revised bids if:

14 1. all bids are rejected under § 13–206(b) of this title;

15 2. all bid prices exceed the funds available for the
16 procurement; or

17 3. with the approval of the head of a [primary procurement]
18 unit or a designee **AND UNDER THE OVERSIGHT OF THE CHIEF PROCUREMENT**
19 **OFFICER**, the procurement officer determines that all bids are unreasonable as to at least
20 one requirement and the delay that would result from issuing a new invitation for auction
21 bids with revised specifications or quantities would be fiscally disadvantageous or
22 otherwise not in the best interests of the State.

23 (ii) If there is more than one bidder, discussions about revised
24 specifications or quantities shall be conducted with all responsible bidders who submitted
25 responsive bids. The bidders shall be treated fairly and equally with respect to any
26 discussions.

27 (iii) If one of the conditions set forth under subparagraph (i) of this
28 paragraph exists, as promptly as possible, the procurement officer shall:

29 1. issue an invitation for revised auction bids, which shall
30 state whether the award will be made without competitive negotiations; and

31 2. require a prompt response to that invitation.

32 (iv) An invitation for revised auction bids is not subject to the notice
33 requirements in subsection (d) of this section.

1 (v) After revised bids have been submitted, negotiations with
2 bidders may not be conducted unless the procurement officer determines that there is a
3 compelling reason to negotiate.

4 (vi) After revised bids have been received and any approval required
5 by law has been obtained, the procurement officer shall award the procurement contract to
6 the responsible bidder who submits a responsive bid that:

- 7 1. is the lowest bid price; or
8 2. if the invitation for revised bids so provides, is the lowest
9 evaluated bid price.

10 (g) Not more than 30 days after the execution and approval of a procurement
11 contract awarded under this section, a unit shall publish notice of the award[:

12 (1) until July 1, 2006, in the Contract Weekly and eMaryland Marketplace;
13 and

14 (2) on and after July 1, 2006,] in eMaryland Marketplace.

15 13–204.

16 (a) (1) By regulation, [each of the primary procurement units] **A UNIT, UNDER**
17 **THE OVERSIGHT OF THE CHIEF PROCUREMENT OFFICER,** may provide for the
18 prequalification of persons as prospective responsible bidders or offerors for procurements
19 other than leases of real property.

20 (2) Each [of the primary procurement units] **UNIT** shall keep a register of
21 all prequalified persons.

22 [(3) Persons prequalified as prospective responsible bidders or offerors by a
23 primary procurement unit for procurements of direct or indirect work–related services shall
24 be deemed to be prequalified for the purposes of procurements by the Department of
25 Human Resources of direct or indirect work–related services to benefit current recipients,
26 former recipients or non–custodial parents of children who are current or former recipients
27 of family investment program benefits.]

28 (b) If a [primary procurement] unit [or the Department of Human Resources]
29 uses a prequalification procedure for awarding a procurement contract:

30 (1) a person who is not prequalified may submit a bid or proposal; and

31 (2) after bid opening or receipt of proposals and before awarding the
32 procurement contract, a procurement officer may determine that:

1 (i) a person who was not prequalified at the time of bid opening or
2 receipt of proposals is a responsible bidder or offeror; or

3 (ii) a prequalified person is not a responsible bidder or offeror.

4 13–217.

5 (a) In this section, “multi–year contract” means a procurement contract that
6 requires appropriations for more than 1 fiscal year.

7 (b) (1) A unit may enter into a multi–year contract subject to:

8 (i) standards established by the Board; and

9 (ii) regulations **DEVELOPED BY THE CHIEF PROCUREMENT**
10 **OFFICER AND** adopted by the [primary procurement unit that is responsible for the type
11 of procurement involved] **BOARD**.

12 (2) A multi–year contract shall be subject to review and approval by [that
13 primary procurement unit] **THE CHIEF PROCUREMENT OFFICER**.

14 (c) A multi–year contract may not be approved unless each unit reviewing the
15 multi–year contract determines that:

16 (1) the estimated requirements of the State:

17 (i) cover the period of the multi–year contract;

18 (ii) are reasonably firm; and

19 (iii) are continuing; and

20 (2) the multi–year contract will serve the best interests of the State by
21 encouraging effective competition or otherwise promoting economy in State procurement.

22 (d) (1) If money sufficient for the continued performance of a multi–year
23 contract is not appropriated for any fiscal year, the multi–year contract terminates
24 automatically on the earlier of:

25 (i) the last day of the fiscal year for which money last was
26 appropriated; or

27 (ii) the date provided in the termination clause of the procurement
28 contract.

29 (2) If the multi–year contract is terminated under this subsection, the unit
30 shall reimburse the contractor for the reasonable value of any nonrecurring costs that were:

1 (i) incurred as a result of the multi-year contract; but

2 (ii) not amortized in the price of the supplies or services delivered
3 under the multi-year contract.

4 (3) The cost of termination under this subsection may be paid from any
5 appropriation available for that purpose.

6 (e) Except as provided in subsection (f) of this section, each multi-year contract,
7 including a lease of real property, shall include an automatic termination clause that:

8 (1) is not inconsistent with the requirements of subsection (d) of this
9 section; and

10 (2) discharges both parties to the multi-year contract from future
11 performance of that contract, but not from their existing obligations.

12 (f) (1) On the recommendation of the Secretary of General Services, the Board
13 may waive the requirement to include an automatic termination clause under subsection
14 (e) of this section for a multi-year contract to procure energy generated from a Tier 1
15 renewable source or a Tier 2 renewable source, as defined in § 7-701 of the Public Utilities
16 Article.

17 (2) In determining whether or not to grant a waiver under paragraph (1) of
18 this subsection, the Board shall consider the effect of imposing the termination clause
19 requirement under subsection (e) of this section on the ability of the energy supplier to
20 obtain financing for the renewable energy generation project that produces the energy that
21 the State is contracting to procure.

22 13-218.

23 (a) Each procurement contract shall include clauses covering:

24 (1) termination for default;

25 (2) termination wholly or partly by the State for its convenience if the head
26 of the [primary procurement] unit, **UNDER THE OVERSIGHT OF THE CHIEF**
27 **PROCUREMENT OFFICER**, determines that termination is appropriate;

28 (3) variations that occur between estimated and actual quantities of work
29 in a procurement contract;

30 (4) liquidated damages, as appropriate;

31 (5) specified excuses for nonperformance;

1 (6) except for real property leases, the unilateral right of the State to order
2 in writing:

3 (i) changes in the work, if the changes are within the scope of the
4 procurement contract; and

5 (ii) a temporary stop or delay in performance;

6 (7) the obligation of the contractor to comply with the political contribution
7 reporting requirements under Title 14 of the Election Law Article, to which the contractor
8 may be subject as required under § 17–402 of this article; and

9 (8) nonvisual access for information technology as required under §
10 3A–312 of this article.

11 (b) In addition to the clauses required under subsection (a) of this section, a
12 procurement contract for construction shall include:

13 (1) a clause providing for contract modification if the condition of a site
14 differs from the condition described in the specifications; and

15 (2) a clause covering the requirements for notice of contract claims,
16 submission of contract claims, and resolution of contract claims under § 15–219 of this
17 article.

18 (c) Each procurement contract shall include a clause that gives to the parties
19 notice that preexisting regulations apply to the procurement contract in accordance with §
20 11–206 of this article.

21 (d) At any time after the parties enter into a procurement contract they may
22 include additional clauses in the procurement contract, by consent, without consideration.

23 (e) A clause required under this section for contract modification of or change
24 orders to a procurement contract for construction shall:

25 (1) make each contract modification or change order that affects the price
26 of the procurement contract subject to:

27 (i) prior written approval from the unit and any other person
28 responsible for the procurement contract; and

29 (ii) prior certification by the fiscal authority responsible for the unit
30 about:

31 1. the availability of money; and

1 2. the effect of the contract modification or change order on
2 the project budget or the total construction cost; and

3 (2) prohibit the contract modification or change order if the certification by
4 the fiscal authority discloses that the contract modification or change order will increase
5 the cost beyond budgeted and available money, unless:

6 (i) sufficient additional money is made available; or

7 (ii) the scope of the project is adjusted to allow completion within the
8 project budget.

9 13–225.

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

11 (2) “Payment security” has the meaning stated in § 17–101 of this article.

12 (3) “Performance security” has the meaning stated in § 17–101 of this
13 article.

14 (b) (1) If a contractor has furnished 100% payment security and 100%
15 performance security in accordance with Title 17, Subtitle 1 of this article under a State
16 procurement contract for construction, the percentage specified in the contract for
17 retainage may not exceed 5% of the total amount.

18 (2) In addition to retainage, a [primary procurement] unit [and the
19 Maryland Transportation Authority], **UNDER THE OVERSIGHT OF THE CHIEF**
20 **PROCUREMENT OFFICER**, may withhold from payments otherwise due a contractor any
21 amount that the unit reasonably believes necessary to protect the State’s interest.

22 (3) Retainage withheld by a [primary procurement] unit [and the
23 Maryland Transportation Authority] may be deposited in an interest-bearing escrow
24 account in accordance with § 15–108 of this article.

25 (c) (1) A contractor may not retain a percentage of payments due a
26 subcontractor that exceeds the percentage of payments retained by the [primary
27 procurement] unit [or the Maryland Transportation Authority].

28 (2) Paragraph (1) of this subsection may not be construed to prohibit a
29 contractor from withholding any amount in addition to retainage if the contractor
30 determines that a subcontractor’s performance under the subcontract provides reasonable
31 grounds for withholding the additional amount.

1 (d) (1) A subcontractor may not retain a percentage of payments due a lower
2 tier subcontractor that exceeds the percentage of payments retained from the
3 subcontractor.

4 (2) Paragraph (1) of this subsection may not be construed to prohibit a
5 subcontractor from withholding any amount in addition to retainage if the subcontractor
6 determines that a lower tier subcontractor's performance under the subcontract provides
7 reasonable grounds for withholding the additional amount.

8 (e) If retainage has been placed in escrow under § 15–108 of this article, each
9 payment of retainage shall include a pro rata portion of interest earned.

10 (f) This section may not be construed to limit the application of the provisions of
11 Title 17, Subtitle 1 of this article.

12 13–226.

13 (a) Unless otherwise prohibited by law, a [primary procurement] unit, **UNDER**
14 **THE OVERSIGHT OF THE CHIEF PROCUREMENT OFFICER**, may conduct procurement,
15 including the solicitation, bidding, award, execution, and administration of a contract, by
16 electronic means as provided in the Uniform Electronic Transactions Act in Title 21 of the
17 Commercial Law Article.

18 (b) Bidding on a procurement contract by electronic means shall constitute
19 consent by the bidder to conduct by electronic means all elements of the procurement of
20 that contract which the unit agrees to conduct by electronic means.

21 (c) (1) Except as provided in paragraph (2) of this subsection, a unit utilizing
22 electronic means to conduct procurement or a private contractor furnishing to the State
23 electronic means for conducting procurement may charge a reasonable fee to the bidder for
24 the use of the electronic means.

25 (2) Unless approved by the Board of Public Works, a fee may not be charged
26 under this subsection.

27 (d) The terms and conditions of a procurement conducted under this section shall
28 comply with the Uniform Electronic Transactions Act in Title 21 of the Commercial Law
29 Article.

30 15–111.

31 (a) Within 90 days after the end of each fiscal year, each [primary procurement]
32 unit shall submit to the Governor and to the General Assembly a report on each
33 procurement contract that was awarded during the preceding fiscal year and:

1 (1) was exempt from the notice requirements of § 13–103(c) of this article
2 because the procurement officer reasonably expected that the procurement contract would
3 be performed entirely outside this State and the District of Columbia;

4 (2) cost more than \$100,000 and was awarded for the procurement of
5 services, construction related services, architectural services, or engineering services; or

6 (3) was awarded on the basis of:

7 (i) § 13–107 of this article (“Sole source procurement”);

8 (ii) § 13–108(a) of this article (“Emergency procurement”); or

9 (iii) § 13–108(c) of this article (“Expedited procurement”).

10 (b) (1) A report required under subsection (a)(2) or (3) of this section shall
11 include:

12 (i) the name of each contractor;

13 (ii) the type and cost of the procurement contract; and

14 (iii) a description of the procurement.

15 (2) A report required under subsection (a)(3) of this section also shall
16 describe the basis for the award.

17 (c) Within 90 days after the end of each fiscal year, the Governor shall submit to
18 the General Assembly a report on each expedited procurement approved under § 13–108(c)
19 of this article.

20 (d) Within 90 days after the end of each fiscal year, the Department of Budget
21 and Management shall submit to the Board and the General Assembly a report on each
22 class of procurement for which the procedure for noncompetitive negotiated procurement
23 has been approved under § 13–106 of this article.

24 (e) A report to the General Assembly under this section is subject to § 2–1246 of
25 the State Government Article.

26 15–216.

27 (a) Title 10, Subtitle 2 of the State Government Article does not apply to the
28 disposition of a protest or a contract claim by:

29 (1) [a primary procurement unit;

30 (2)] a procurement officer; or

1 ~~[(3)] (2)~~ a unit.

2 (b) The Appeals Board shall conduct its proceedings in accordance with Title 10,
3 Subtitle 2 of the State Government Article.

4 15–217.

5 (a) (1) A prospective bidder or offeror, a bidder, or an offeror may submit a
6 protest to the procurement officer.

7 (2) A unit or a person who has been awarded a procurement contract may
8 submit a contract claim to the procurement officer.

9 (b) Except as provided in § 15–219 of this subtitle, a protest or contract claim
10 shall be submitted within the time required under regulations **DEVELOPED BY THE**
11 **CHIEF PROCUREMENT OFFICER AND** adopted by the [primary procurement unit
12 responsible for the procurement] **BOARD**.

13 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2019,
14 the Chief Procurement Officer shall report to the Governor and, in accordance with §
15 2–1246 of the State Government Article, the Senate Education, Health, and Environmental
16 Affairs Committee and the House Health and Government Operations Committee on:

17 (1) a structure for delegating and overseeing specified types of
18 procurement to units with expertise in those types of procurement;

19 (2) the development of performance metrics and the implementation of
20 strategic sourcing;

21 (3) recommendations for consolidating and deleting reporting
22 requirements;

23 (4) recommendations for reporting requirements for units exempt from the
24 oversight of the Board of Public Works, including procurements for which the Maryland
25 Department of Transportation and the University System of Maryland are exempt;

26 (5) whether the policy of the State as provided by § 13–102 of the State
27 Finance and Procurement Article, which requires the use of competitive sealed bids unless
28 another procurement method is specifically authorized, should be changed and how;

29 (6) whether the small procurement dollar thresholds established under §
30 13–109 of the State Finance and Procurement Article should be raised and to what amount;
31 and

1 (7) recommendations on what exemptions from State procurement laws
2 and obsolete programs should be repealed, including the Small Business Preference
3 Program.

4 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2017,
5 the General Counsel to the Board of Public Works and the Office of the Attorney General
6 shall report to the Governor and, in accordance with § 2–1246 of the State Government
7 Article, the Senate Education, Health, and Environmental Affairs Committee and the
8 House Health and Government Operations Committee on a process for establishing a
9 centralized procurement attorney office in the State to provide consistent interpretation
10 and application of procurement laws to the Board of Public Works and procurement staff
11 throughout the State.

12 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before October 1, 2017,
13 the Board of Public Works and the Department of Budget and Management shall:

14 (1) review the job title, classifications, and compensation for
15 procurement–related positions in the State Personnel Management System established by
16 § 2–202 of the State Personnel and Pensions Article; and

17 (2) (i) rename and reclassify procurement–related positions in the
18 State Personnel and Management System, taking into account procurement–related
19 positions in small agencies as described in Section 8(2) of this Act, as necessary for the
20 purpose of establishing:

21 1. clear lines of authority under the Chief Procurement
22 Officer;

23 2. a single path of advancement for procurement
24 professionals in the State Personnel Management System; and

25 3. consistent job titles and compensation for procurement
26 staff performing similar duties in or on behalf of different agencies; and

27 (ii) in renaming and reclassifying procurement–related positions, ensure
28 that no current employees experience a diminution in responsibilities or compensation as
29 a result of the reclassification.

30 SECTION 5. AND BE IN FURTHER ENACTED, That, on or before October 1, 2018,
31 the Board of Public Works, in consultation with the University System of Maryland and
32 the Maryland Department of Transportation, shall report to the Governor and, in
33 accordance with § 2–1246 of the State Government Article, the General Assembly on
34 strategies to enhance the authority of the Chief Procurement Officer over procurement staff
35 employed under independent personnel management systems, including the feasibility of
36 including those staff under the State Personnel Management System.

1 SECTION 6. AND BE IT FURTHER ENACTED, That, to the extent practicable, the
2 Chief Procurement Officer established under this Act shall use staff currently working for
3 the Board of Public Works and transfer procurement staff from other agencies to assist in
4 carrying out the duties of the Chief Procurement Officer as established by this Act.

5 SECTION 7. AND BE IT FURTHER ENACTED, That all persons who are classified
6 employees of a State agency as of October 1, 2018, and who are transferred under this Act
7 to employment under the authority of the Chief Procurement Officer shall be transferred
8 without any diminution of their rights, benefits, or employment status, including, if any,
9 merit system and retirement status.

10 SECTION 8. AND BE IT FURTHER ENACTED, That it is the intent of the General
11 Assembly that, at the discretion of the Chief Procurement Officer:

12 (1) procurement staff who provide procurement services exclusively to a
13 particular State agency may be housed at that State agency; and

14 (2) procurement staff employed or hired in smaller agencies who have
15 significant duties separate and apart from procurement matters may continue employment
16 with their agencies while handling procurement matters for their agencies under the
17 authority of and consistent with policies and procedures established by the Chief
18 Procurement Officer.

19 SECTION 9. AND BE IT FURTHER ENACTED, That Sections 1, 2, 6, 7, and 8 of
20 this Act shall take effect October 1, 2018.

21 SECTION 10. AND BE IT FURTHER ENACTED, That, except as provided in
22 Section 9 of this Act, this Act shall take effect October 1, 2016.