

Chapter 495

(Senate Bill 791)

AN ACT concerning

Procurement – Multi-Year Contracts for Renewable Energy – Termination Clauses

FOR the purpose of authorizing the Board of Public Works, on the recommendation of the Secretary of General Services, to waive a certain requirement to include a certain termination clause in certain multi-year contracts for the procurement of energy generated from certain renewable sources; requiring the Board to consider a certain factor in determining whether to grant a certain waiver; and generally relating to the terms of multi-year procurement contracts.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 13–217
Annotated Code of Maryland
(2009 Replacement Volume)

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

Article – State Finance and Procurement

13–217.

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

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

(i) standards established by the Board; and

(ii) regulations adopted by the primary procurement unit that is responsible for the type of procurement involved.

(2) A multi-year contract shall be subject to review and approval by that primary procurement unit.

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

(1) the estimated requirements of the State:

- (i) cover the period of the multi-year contract;
- (ii) are reasonably firm; and
- (iii) are continuing; and

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

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

- (i) the last day of the fiscal year for which money last was appropriated; or
- (ii) the date provided in the termination clause of the procurement contract.

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

- (i) incurred as a result of the multi-year contract; but
- (ii) not amortized in the price of the supplies or services delivered under the multi-year contract.

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

(e) **[Each] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, EACH** multi-year contract, including a lease of real property, shall include an automatic termination clause that:

- (1) is not inconsistent with the requirements of subsection (d) of this section; and
- (2) discharges both parties to the multi-year contract from future performance of that contract, but not from their existing obligations.

(F) (1) ON THE RECOMMENDATION OF THE SECRETARY OF GENERAL SERVICES, THE BOARD MAY WAIVE THE REQUIREMENT TO INCLUDE AN

AUTOMATIC TERMINATION CLAUSE UNDER SUBSECTION (E) OF THIS SECTION FOR A MULTI-YEAR CONTRACT TO PROCURE ENERGY GENERATED FROM A TIER 1 RENEWABLE SOURCE OR A TIER 2 RENEWABLE SOURCE, AS DEFINED IN § 7-701 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

(2) IN DETERMINING WHETHER OR NOT TO GRANT A WAIVER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER THE EFFECT OF IMPOSING THE TERMINATION CLAUSE REQUIREMENT UNDER SUBSECTION (E) OF THIS SECTION ON THE ABILITY OF THE ENERGY SUPPLIER TO OBTAIN FINANCING FOR THE RENEWABLE ENERGY GENERATION PROJECT THAT PRODUCES THE ENERGY THAT THE STATE IS CONTRACTING TO PROCURE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.