

# HOUSE BILL 1021

P2  
HB 353/16 – HGO

7lr2523

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By: **Delegate Reznik**

Introduced and read first time: February 8, 2017

Assigned to: Health and Government Operations

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## 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  
31 intergovernmental cooperative purchasing agreement if a certain determination is

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



made under the oversight of the Chief Procurement Officer; authorizing a unit to seek bids for certain procurements by issuing an invitation for auction bids under the oversight of the Chief Procurement Officer; authorizing a procurement officer to award a procurement based on revised bids under certain circumstances and the oversight of the Chief Procurement Officer; authorizing a unit under the oversight of the Chief Procurement Officer to provide for prequalification of certain persons for procurement other than leases of real property; authorizing a unit to enter into multi-year contracts subject to certain regulations developed by the Chief Procurement Officer and approved by the Board; requiring that multi-year contracts be subject to review and approval by the Chief Procurement Officer; requiring procurement contracts to include clauses covering certain termination by the State if the head of a unit, under the oversight of the Chief Procurement Officer, determines that termination is appropriate; authorizing a unit under the oversight of the Chief Procurement Officer to withhold certain payment under certain circumstances; authorizing a unit, under the oversight of the Chief Procurement Officer, to conduct procurement by electronic means as provided under certain provisions of law; requiring a unit to submit a certain report to the Governor and General Assembly within a certain period of time each fiscal year; requiring certain protests or contract claims to be submitted within a certain time required under certain regulations developed by the Chief Procurement Officer and adopted by the Board; repealing provisions of law requiring certain jurisdiction and control by certain units over certain types of procurement; repealing provisions of law requiring the adoption of certain regulations by certain units; repealing obsolete provisions of law; altering certain definitions; requiring the Chief Procurement Officer to report to the Governor and certain committees of the General Assembly on or before a certain date; requiring the General Counsel to the Board and the Office of the Attorney General to report to the Governor and certain committees of the General Assembly on or before a certain date; requiring the Board and the Department of Budget and Management to review certain job titles, classifications, and compensation for certain procurement-related positions and rename and reclassify those positions for certain purposes subject to certain requirements on or before a certain date; requiring the Board, in consultation with the University System of Maryland and the Maryland Department of Transportation, to report to the Governor and the General Assembly on certain strategies to govern procurement staff employed under independent personnel management systems; requiring the Chief Procurement Officer to use certain staff and transfer certain staff, subject to certain conditions, to assist in carrying out certain duties; stating the intent of the General Assembly in relation to procurement staff at certain State agencies; providing for a delayed effective date for certain provisions of this Act; and generally relating to State procurement.

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement

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

Annotated Code of Maryland

(2015 Replacement Volume and 2016 Supplement)

BY repealing

Article – State Finance and Procurement

Section 12–107 and 12–108

Annotated Code of Maryland

(2015 Replacement Volume and 2016 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**

4–801.

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

4–804.

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

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

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

11–101.

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

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

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

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

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

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

(2) “Architectural services” includes consultation, research, investigation,  
evaluation, planning, architectural design and preparation of related documents, and

coordination of services that structural, civil, mechanical, and electrical engineers and other consultants provide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) leasing real or personal property as lessee; or
- (ii) buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract.

(2) “Procurement” includes the solicitation and award of procurement contracts and all phases of procurement contract administration.

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

(2) “Procurement contract” does not include:

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

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

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

1. user or recipient eligibility; and

2. price payable by the State; or

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

1. recipient eligibility;

2. minimum qualifications for managed care organizations;

and

3. criteria for enrolling recipients in managed care organizations.

(o) “Procurement officer” means an individual authorized by a unit to:

(1) enter into a procurement contract;

(2) administer a procurement contract; or

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

(p) “Proposal” means a response to any solicitation other than an invitation for bids.

(q) “Request for proposals” means any document used for soliciting proposals.

(r) “Responsible bidder or offeror” means a person who:

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

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

(s) “Responsive bid” means a bid that:

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

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

(t) (1) Except as provided in paragraph (3) of this subsection, “services” means:

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

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

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

(3) “Services” does not include:

(i) construction related services;

(ii) architectural services;

(iii) engineering services; or

(iv) energy performance contract services.

(u) “State” means:

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

(2) the District of Columbia.

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

(2) “State correctional facilities” includes Patuxent Institution.

(w) (1) “Supplies” means:

(i) insurance;

(ii) tangible personal property;

(iii) printing; and

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

(2) “Supplies” does not include:

(i) an interest in real property; or

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

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

(2) “Unit” does not include:

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

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

12–101.

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

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

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

(i) set policy;

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

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



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

(4) The Board may:

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

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

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

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

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

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

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

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

12-102.

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

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

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

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

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

(IV) WHILE RETAINING OVERSIGHT, DELEGATE CONTROL OF  
PROCUREMENT ACTIVITY TO UNITS WITH EXPERTISE IN SPECIFIED TYPES OF  
PROCUREMENT;

(V) DEVELOP PERFORMANCE METRICS FOR STATE  
PROCUREMENT AND IMPLEMENT STRATEGIC SOURCING WHEN APPROPRIATE;

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

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

1. has been competitively conducted; and

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

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

[(v)] (IX) conduct investigations into procurement policies,  
practices, and procedures, as appropriate;

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

[(vii)] (XI) investigate complaints, other than formal bid protests  
filed under Title 15, Subtitle 2 of this article, made by contractors and other interested

parties concerning fraud, waste, and abuse in the procurement process and any alleged violation of the procurement law or regulations;

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

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

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

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

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

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

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

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

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

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

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

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

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

(XXII) MANAGE EMARYLAND MARKETPLACE;

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

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

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

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

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

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

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

(2) The General Counsel shall:

(i) provide independent legal advice to the Board;

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

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

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

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

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

(3) The General Counsel shall:

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

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

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

12–105.

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

(b) There is a Procurement Advisory Council.

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

(i) the State Treasurer;

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

(iii) the Secretary of Budget and Management;

(iv) the Secretary of General Services;

(v) the Secretary of Information Technology;

(vi) the Secretary of Transportation;

(vii) the Secretary of the Board;

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

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

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

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

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

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

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

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

(g) The Council shall:

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

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

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

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

(5) review existing procurement regulations to:

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

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

[12-107.

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

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

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

9                   (2)     the Department of Budget and Management may control procurement  
10 of:

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

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

15                   (3)     the Department of General Services may engage in or control  
16 procurement of:

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

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

22                           (iii)   construction, including construction under Title 4, Subtitle 4 of  
23 this article;

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

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

28                   (4)     the Department of Transportation and the Maryland Transportation  
29 Authority, without the approval of any of the other primary procurement units, may engage  
30 in the procurement of:

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

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

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

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

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

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

2. insurance; and

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

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

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

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

2. insurance;

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

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

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

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

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



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

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

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

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

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

[12–108.

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

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

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

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

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

12–110.

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

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

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

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

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

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

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

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

(i) the State Treasurer;

(ii) the Attorney General;

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

(iv) the State Superintendent of Schools;

(v) the Secretary of Budget and Management;

(vi) the Secretary of Juvenile Services;

(vii) the Secretary of Human Resources;

(viii) the Secretary of Health and Mental Hygiene;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (g)    The Council shall:

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

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

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

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

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

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

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

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

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

12-301.

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

(2) The Maryland Energy Administration shall review the proposed request to ensure that it meets with the State energy standards, preserves the State's flexibility to investigate and use economically justifiable new technologies, and is in conformance with the unit's energy conservation plan that has been developed in accordance with § 4-806 of this article.

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

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

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

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

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

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

(ii) The Board may:

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

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

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

13–101.

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

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

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

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

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

13–102.1.

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

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

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

13–109.

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

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

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

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

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

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

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

(1) shall provide for a simplified administrative procedure;

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

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

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

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

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

1 13–110.

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

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

5 (3) “Governmental entity” means:

6 (i) the federal government or an agency or other instrumentality of  
7 the federal government;

8 (ii) another state or an agency or other instrumentality of another  
9 state;

10 (iii) a bistate or multistate agency;

11 (iv) a county, municipal corporation, or other political subdivision of  
12 the State or of another state, or an agency or other instrumentality of the political  
13 subdivision;

14 (v) a bicounty or multicounty agency;

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

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

19 (4) “Intergovernmental cooperative purchasing agreement” means a  
20 contract:

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

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

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

29 (ii) between a [primary procurement] unit and a person who, at the  
30 time the intergovernmental cooperative purchasing agreement is awarded, has a contract  
31 with the federal government or an agency or other instrumentality of the federal

government, and who agrees to provide the unit with identical prices, terms, and conditions as stipulated in the federal contract.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

1. a procurement for a capital facility, improvement, or other unique purchase; or
2. a procurement with a projected value of less than \$100,000.

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

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

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

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

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

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

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

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

13–111.

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

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

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

(i) the specifications of the procurement contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

9                   (2)    A procurement officer shall:

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

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

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

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

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

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

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

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

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

27                               (i)    is the lowest bid price; or

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

30                   (2)    If, after bids have been received, a procurement officer determines that  
31 only one responsible bidder has submitted a responsive bid, the unit may negotiate the

procurement contract with that one bidder under the procedure for sole source procurement.

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

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

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

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

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

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

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

2. require a prompt response to that invitation.

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

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

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

1. is the lowest bid price; or

2. if the invitation for revised bids so provides, is the lowest evaluated bid price.

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

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

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

13–204.

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

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

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

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

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

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

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

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

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 **DEVELOPED BY THE CHIEF PROCUREMENT OFFICER AND** adopted by the [primary procurement unit that is responsible for the type of procurement involved] **BOARD**.

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

(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) 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 Utilities 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.

13-218.

(a) Each procurement contract shall include clauses covering:

(1) termination for default;

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

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

(4) liquidated damages, as appropriate;

(5) specified excuses for nonperformance;

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

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

(ii) a temporary stop or delay in performance;

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

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

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

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

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

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

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

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

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

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

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

1. the availability of money; and

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

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

(i) sufficient additional money is made available; or

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

13–225.



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

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

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

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

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

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

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

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

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

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

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

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

1 13–226.

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

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

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

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

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

19 15–111.

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

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

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

28 (3) was awarded on the basis of:

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

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

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

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

- (i) the name of each contractor;
- (ii) the type and cost of the procurement contract; and
- (iii) a description of the procurement.

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

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

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

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

15–216.

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

- (1) [a primary procurement unit;
- (2)] a procurement officer; or
- [(3)] (2) a unit.

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

15–217.

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

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

(b) Except as provided in § 15–219 of this subtitle, a protest or contract claim shall be submitted within the time required under regulations **DEVELOPED BY THE**

1 **CHIEF PROCUREMENT OFFICER AND** adopted by the [primary procurement unit  
2 responsible for the procurement] **BOARD.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2020,  
4 the Chief Procurement Officer shall report to the Governor and, in accordance with §  
5 2–1246 of the State Government Article, the Senate Education, Health, and Environmental  
6 Affairs Committee and the House Health and Government Operations Committee on:

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

9 (2) the development of performance metrics and the implementation of  
10 strategic sourcing;

11 (3) recommendations for consolidating and deleting reporting  
12 requirements;

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

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

19 (6) whether the small procurement dollar thresholds established under §  
20 13–109 of the State Finance and Procurement Article should be raised and to what amount;  
21 and

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

25 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2018,  
26 the General Counsel to the Board of Public Works and the Office of the Attorney General  
27 shall report to the Governor and, in accordance with § 2–1246 of the State Government  
28 Article, the Senate Education, Health, and Environmental Affairs Committee and the  
29 House Health and Government Operations Committee on a process for establishing a  
30 centralized procurement attorney office in the State to provide consistent interpretation  
31 and application of procurement laws to the Board of Public Works and procurement staff  
32 throughout the State.

33 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before October 1, 2018,  
34 the Board of Public Works and the Department of Budget and Management shall:

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

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

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

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

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

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

SECTION 5. AND BE IT FURTHER ENACTED, That, on or before October 1, 2019, the Board of Public Works, in consultation with the University System of Maryland and the Maryland Department of Transportation, shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on strategies to enhance the authority of the Chief Procurement Officer over procurement staff employed under independent personnel management systems, including the feasibility of including those staff under the State Personnel Management System.

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

SECTION 7. AND BE IT FURTHER ENACTED, That all persons who are classified employees of a State agency as of October 1, 2019, and who are transferred under this Act to employment under the authority of the Chief Procurement Officer shall be transferred without any diminution of their rights, benefits, or employment status, including, if any, merit system and retirement status.

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

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

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

6           SECTION 9. AND BE IT FURTHER ENACTED, That Sections 1, 2, 6, 7, and 8 of  
7 this Act shall take effect October 1, 2019.

8           SECTION 10. AND BE IT FURTHER ENACTED, That, except as provided in  
9 Section 9 of this Act, this Act shall take effect October 1, 2017.