

# HOUSE BILL 991

P2

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By: **Delegate Wilson**

Introduced and read first time: February 5, 2020

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Transparency and Application to County Contracts**

3 FOR the purpose of altering the definition of “unit” for the purposes of applying certain  
4 provisions of law governing procurement to certain county procurement contracts  
5 using State funds or for the benefit of the State; requiring certain invitations for bids  
6 and requests for proposals to include certain instructions; altering the period of time  
7 within which a unit is required to publish a certain notice of award in a competitive  
8 sealed bid or sole source procurement in eMaryland Marketplace; requiring a unit to  
9 publish a certain notice of award in a competitive sealed proposal within a certain  
10 period of time; requiring a unit to deliver certain notices to certain unsuccessful  
11 bidders and unsuccessful offerors in a certain manner within a certain period of time;  
12 authorizing an unsuccessful bidder or unsuccessful offeror to request a certain  
13 debrief within a certain period of time after receiving a certain notice; requiring a  
14 unit to provide a certain debrief within a certain period of time after receiving a  
15 certain request; requiring certain minutes and certain documents to be published in  
16 eMaryland Marketplace at certain times; requiring a certain protest to be filed  
17 within a certain period of time; requiring the Special Secretary for the Office of  
18 Small, Minority, and Women Business Affairs to assign certain staff as required  
19 under certain provisions of this Act; requiring a member of the Office staff to be  
20 assigned to certain procurement units; requiring each member of the Office staff  
21 assigned to a unit under a certain provision of this Act to observe certain  
22 procurement processes and ensure that certain goals are met in a certain manner;  
23 and generally relating to procurement.

24 BY repealing and reenacting, without amendments,  
25 Article – State Finance and Procurement  
26 Section 11–101(a)  
27 Annotated Code of Maryland  
28 (2015 Replacement Volume and 2019 Supplement)

29 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Finance and Procurement

Section 11–101(y), 13–103, 13–104, 13–107(c), 13–210, and 15–217

Annotated Code of Maryland

(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government

Section 9–304

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

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

**Article – State Finance and Procurement**

11–101.

(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.

(y) (1) “Unit” means:

(I) 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; AND

(II) AN OFFICER OR OTHER ENTITY OF A COUNTY GOVERNMENT  
IF THE OFFICER OR ENTITY IS ENTERING INTO A PROCUREMENT CONTRACT:

**1. USING STATE FUNDS; OR**

**2. FOR THE BENEFIT OF THE STATE, A UNIT OF THE  
STATE, OR STATE OFFICIALS OR EMPLOYEES.**

(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.

13–103.

1 (a) (1) Whenever procurement is based on competitive sealed bids, a  
2 procurement officer shall seek bids by issuing an invitation for bids.

3 (2) Subject to subsection (b) of this section, an invitation for bids shall  
4 include:

5 (i) the specifications of the procurement contract, including the  
6 expected degree of minority business enterprise participation, as provided in § 14–303(b) of  
7 this article;

8 (ii) whether the procurement contract will be awarded based on the  
9 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §  
10 11–202(3) of this article, the bid most favorable to the State;

11 (iii) if the procurement contract will be based on evaluated bid price,  
12 the objective measurable criteria by which the lowest evaluated bid price will be  
13 determined; [and]

14 (iv) if the Secretary of General Services, the Secretary of  
15 Transportation, or the Chancellor of the University System of Maryland has so designated,  
16 the small business preference;

17 **(V) INSTRUCTIONS ON HOW TO SUBMIT A PROTEST UNDER §**  
18 **15–217 OF THIS ARTICLE;**

19 **(VI) INSTRUCTIONS ON HOW TO ACCESS MATERIALS THAT ARE**  
20 **OPEN TO PUBLIC INSPECTION UNDER § 13–210(B) OF THIS TITLE; AND**

21 **(VII) INSTRUCTIONS ON HOW TO REQUEST AN UNSUCCESSFUL**  
22 **BIDDER DEBRIEF UNDER SUBSECTION (G) OF THIS SECTION.**

23 (b) (1) Whenever a procurement officer determines that an initial preparation  
24 of specifications for price bids is impracticable, the invitation for bids may:

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

26 (ii) direct bidders to submit price bids:

27 1. with the unpriced technical offers or samples; or

28 2. after the unit evaluates the technical offers or samples and  
29 finds that they are acceptable under the criteria set forth in the invitation for bids.

30 (2) A unit shall consider the prices submitted by bidders whose technical  
31 offers or samples have been found acceptable.

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

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

(ii) A procurement officer shall return an unopened price bid submitted by a bidder whose technical offer or sample has been evaluated as unacceptable.

(c) (1) A unit shall give public notice of an invitation for bids before bid opening in accordance with this subsection.

(2) A unit shall give reasonable notice that shall be at least 10 days before bid opening.

(3) The unit shall publish notice in eMaryland Marketplace at least 20 days before bid opening if:

(i) the procurement officer reasonably expects bid prices to exceed \$50,000 or a lower amount set by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government Article; and

(ii) at least part of the procurement contract is to be performed in this State or the District of Columbia.

(4) In addition to any notice required under this subsection, a unit may publish notice of an invitation for bids:

(i) on a bid board or eMaryland Marketplace; or

(ii) in a newspaper, periodical, or trade journal.

(d) (1) A procurement officer shall:

(i) open bids in public at the time and place designated in the invitation for bids; and

(ii) announce, record, and post:

1. the name of each bidder; and

2. the amount of each bid.

(2) Except as provided in paragraph (3) of this subsection, a bid is irrevocable, after bid opening, for the period specified in the invitation for bids.

1                   (3)    A procurement officer may allow a bidder to correct or withdraw a bid  
2 if correction or withdrawal is:

3                   (i)     allowed under regulations adopted under this Division II; and

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

5           (e)    (1)    After obtaining any approval required by law, the procurement officer  
6 shall award the procurement contract to the responsible bidder who submits the responsive  
7 bid that:

8                   (i)     is the lowest bid price;

9                   (ii)    if the invitation for bids so provides, is the lowest evaluated bid  
10 price; or

11                  (iii)   for procurement subject to § 11–202(3) of this article, is the bid  
12 most favorable to the State.

13           (2)    If, after competitive sealed bids have been opened, a procurement  
14 officer determines that only 1 responsible bidder has submitted a responsive bid, the unit  
15 may negotiate the procurement contract with that 1 bidder under the procedure for sole  
16 source procurement.

17           (3)    (i)     After competitive sealed bids have been opened, a procurement  
18 officer may award a procurement contract on the basis of revised bids if:

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

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

22                           3.     with the approval of the head of the unit or a designee, the  
23 procurement officer determines that all bids are unreasonable as to at least 1 requirement  
24 and the delay that would result from issuing a new invitation for bids with revised  
25 specifications or quantities would be fiscally disadvantageous or otherwise not in the best  
26 interests of the State.

27                   (ii)    If there is more than 1 bidder, discussions about revised  
28 specifications or quantities shall be conducted with all responsible bidders who submitted  
29 responsive bids. The bidders shall be treated fairly and equally with respect to any  
30 discussions.

31                   (iii)   As promptly as possible, the procurement officer shall:

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

2. require a prompt response to that invitation.

(iv) An invitation for revised bids is not subject to the notice requirements in subsection (c) 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 opened 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;

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

3. for procurement subject to § 11–202(3) of this article, is the bid most favorable to the State.

(4) A responsive bid or proposal shall include the criteria specified in subsection (a) of this section.

(f) Not more than **[30] 15** days after the execution and approval of a procurement contract in excess of \$50,000 awarded under this section, or a lower amount set by the Board by regulation in accordance with Title 10, Subtitle 1 of the State Government Article, a unit shall:

**(1) publish notice of the award in eMaryland Marketplace; AND**

**(2) DELIVER BY E-MAIL AND FIRST-CLASS MAIL TO EACH UNSUCCESSFUL BIDDER A NOTICE STATING THAT THE BIDDER WAS UNSUCCESSFUL.**

**(G) (1) AN UNSUCCESSFUL BIDDER MAY REQUEST A DEBRIEF WITHIN 3 DAYS AFTER RECEIVING NOTICE OF A CONTRACT AWARD UNDER SUBSECTION (F)(2) OF THIS SECTION.**

**(2) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, A UNIT SHALL PROVIDE A DEBRIEF TO THE UNSUCCESSFUL BIDDER THAT INCLUDES:**

**(I) AN EXPLANATION OF WHY THE SUCCESSFUL BIDDER WAS CHOSEN;**

(II) THE REASONS THE UNSUCCESSFUL BIDDER WAS NOT THE SUCCESSFUL BIDDER;

(III) THE RANKING, IF ANY, OF THE UNSUCCESSFUL BIDDER AS COMPARED TO OTHER BIDDERS; AND

(IV) SUPPORTING DOCUMENTATION FOR THE UNIT'S DECISION PROCESS.

13–104.

(a) Competitive sealed proposals is the preferred method for human, social, cultural, or educational services.

(b) (1) Whenever procurement is based on competitive sealed proposals, a procurement officer shall seek proposals by issuing a request for proposals.

(2) A request for proposals shall include [a statement of]:

(i) A STATEMENT OF the scope of the procurement contract, including the expected degree of minority business enterprise participation, as provided in § 14–303(b) of this article;

(ii) A STATEMENT OF the factors, including price, that will be used in evaluating proposals; [and]

(iii) A STATEMENT OF the relative importance of each factor;

(IV) INSTRUCTIONS ON HOW TO SUBMIT A PROTEST UNDER § 15–217 OF THIS ARTICLE;

(V) INSTRUCTIONS ON HOW TO ACCESS MATERIALS THAT ARE OPEN TO PUBLIC INSPECTION UNDER § 13–210(B) OF THIS TITLE; AND

(VI) INSTRUCTIONS ON HOW TO REQUEST AN UNSUCCESSFUL OFFEROR DEBRIEF UNDER SUBSECTION (H) OF THIS SECTION.

(c) A unit shall publish a request for proposals in the same manner as required for an invitation for bids.

(d) (1) After receipt of proposals but before the procurement officer awards the procurement contract, a unit may conduct discussions with an offeror to:

(i) obtain the best price for the State; and

(ii) ensure full understanding of:

1. the requirements of the State, as set forth in the request for proposals; and

2. the proposal submitted by the offeror.

(2) If discussions are conducted, the unit:

(i) shall conduct the discussions in accordance with regulations adopted under this Division II;

(ii) shall provide an opportunity to participate to each responsible offeror who submits a proposal that, in the judgment of the procurement officer, is reasonably susceptible of being selected for award;

(iii) shall treat all of those responsible offerors fairly and equally;

(iv) may allow all of those responsible offerors to revise their initial proposals by submitting best and final offers, if discussions indicate that it would be in the best interests of the State to do so;

(v) may conduct more than 1 series of discussions and requests for best and final offers; and

(vi) may not disclose to an offeror any information derived from a proposal or discussions with a competing offeror.

(e) (1) Except as provided in paragraph (2) of this subsection:

(i) a proposal is irrevocable for the period specified in the request for proposals; and

(ii) a best and final offer is irrevocable for the period specified in the request for best and final offers.

(2) A procurement officer may allow an offeror to correct or withdraw a proposal or best and final offer if correction or withdrawal is:

(i) allowed under regulations adopted under this Division II; and

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

(f) After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State considering the



1 evaluation factors set forth in the request for proposals.

2 (g) [A unit shall publish notice of] **NOT MORE THAN 15 DAYS AFTER THE**  
3 **EXECUTION AND APPROVAL OF** a contract in excess of \$50,000 awarded under this  
4 section, or a lower amount set by the Board by regulation in accordance with Title 10,  
5 Subtitle 1 of the State Government Article, **A UNIT SHALL:**

6 (1) **PUBLISH NOTICE OF THE AWARD** in eMaryland Marketplace; **AND**

7 (2) **DELIVER BY E-MAIL AND FIRST-CLASS MAIL TO EACH**  
8 **UNSUCCESSFUL OFFEROR A NOTICE STATING THAT THE OFFEROR WAS**  
9 **UNSUCCESSFUL.**

10 (H) (1) **AN UNSUCCESSFUL OFFEROR MAY REQUEST A DEBRIEF WITHIN 3**  
11 **DAYS AFTER RECEIVING NOTICE OF A CONTRACT AWARD UNDER SUBSECTION (G)(2)**  
12 **OF THIS SECTION.**

13 (2) **WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST**  
14 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, A UNIT SHALL PROVIDE A DEBRIEF TO**  
15 **THE UNSUCCESSFUL OFFEROR THAT INCLUDES:**

16 (I) **AN EXPLANATION OF WHY THE SUCCESSFUL OFFEROR WAS**  
17 **CHOSEN;**

18 (II) **THE REASONS THE UNSUCCESSFUL OFFEROR WAS NOT THE**  
19 **SUCCESSFUL OFFEROR;**

20 (III) **THE RANKING, IF ANY, OF THE UNSUCCESSFUL OFFEROR AS**  
21 **COMPARED TO OTHER OFFERORS; AND**

22 (IV) **SUPPORTING DOCUMENTATION FOR THE UNIT'S DECISION**  
23 **PROCESS.**

24 13-107.

25 (c) Not more than [30] **15** days after the execution and approval of a procurement  
26 contract awarded under this section, a unit shall publish in eMaryland Marketplace notice  
27 of the award.

28 13-210.

29 (a) (1) If a procurement officer decides to conduct a pre-bid conference to  
30 explain the requirements of a procurement that is expected to exceed \$100,000, as soon as  
31 practicable after the conference concludes, the procurement officer shall have written

1 minutes of the conference prepared.

2 (2) The minutes of a pre-bid conference are public records and shall be:

3 (I) **PUBLISHED IN EMARYLAND MARKETPLACE; AND**

4 (II) open to public inspection during ordinary business hours.

5 (b) (1) Subject to Title 4 of the General Provisions Article:

6 (i) a summary of the final evaluation of a proposal shall be  
7 **PUBLISHED IN EMARYLAND MARKETPLACE AND** open to public inspection;

8 (ii) after an award, all proposals shall be **PUBLISHED IN**  
9 **EMARYLAND MARKETPLACE AND** open to public inspection; and

10 (iii) [at and after bid opening,] the contents of a bid and any  
11 document submitted with the bid shall be:

12 1. open to public inspection **AT AND AFTER BID OPENING;**  
13 **AND**

14 2. **PUBLISHED IN EMARYLAND MARKETPLACE AFTER**  
15 **BID OPENING.**

16 (2) Except as otherwise provided in this section, Title 4 of the General  
17 Provisions Article shall govern any request for the disclosure of information related to a  
18 procurement.

19 (c) A procurement officer may deny public access to the advisory or deliberative  
20 records of an evaluator of a proposal if the records would not be available by law to a private  
21 party in litigation with the unit.

22 (d) (1) Before bid opening:

23 (i) bids shall remain sealed; and

24 (ii) the State may not disclose the name of a bidder.

25 (2) Before the closing date for proposals, a procurement officer may not  
26 disclose the name of a person who has submitted a proposal.

27 (3) Before awarding a procurement contract based on competitive sealed  
28 proposals, the State may not disclose the contents of a proposal to any person other than a  
29 person responsible for evaluating or reviewing the proposal.

(e) Subsections (b)(1), (c), and (d) of this section do not affect the authority of the Board of Contract Appeals or a court of competent jurisdiction to:

(1) decide that information is discoverable in an administrative or judicial proceeding; and

(2) compel disclosure.

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) (1) A PROTEST SHALL BE SUBMITTED WITHIN 10 DAYS AFTER THE LATER OF:**

**(I) THE DATE ON WHICH NOTICE OF THE CONTRACT AWARD IS PUBLISHED UNDER § 13–103(F)(1) OR § 13–104(G)(1) OF THIS ARTICLE; OR**

**(II) THE DATE ON WHICH THE BIDDER OR OFFEROR FIRST RECEIVES NOTICE OF THE CONTRACT AWARD THAT IS DELIVERED UNDER § 13–103(F)(2) OR § 13–104(G)(2) OF THIS ARTICLE.**

**(2)** Except as provided in § 15–219 of this subtitle, a [protest or] contract claim shall be submitted within the time required under regulations adopted by the primary procurement unit responsible for the procurement.

## **Article – State Government**

9–304.

**(A)** Subject to the limitations of any law that governs the activities of other units of the Executive Branch of the State government, the Special Secretary shall:

(1) advise the Governor on:

(i) the activities of the State government that are intended to promote the employment of minority persons in the State; and

(ii) each other matter that affects the rights and interests of minority persons and the communities in which they live; [and]

(2) as authorized by the Governor:

1 (i) provide help to minority persons and the communities in which  
2 they live;

3 (ii) represent the Governor in any matter that relates to minority  
4 persons or generally to the promotion of equality among the people of the State; and

5 (iii) perform any other responsibility that the Governor assigns; AND

6 **(3) ASSIGN OFFICE STAFF AS REQUIRED UNDER SUBSECTION (B) OF**  
7 **THIS SECTION.**

8 **(B) (1) A MEMBER OF OFFICE STAFF SHALL BE ASSIGNED TO EACH UNIT**  
9 **THAT IS AUTHORIZED BY LAW TO ENTER INTO A PROCUREMENT CONTRACT THAT IS**  
10 **SUBJECT TO THE REQUIREMENTS OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE**  
11 **AND PROCUREMENT ARTICLE (“MINORITY BUSINESS PARTICIPATION”).**

12 **(2) EACH STAFF MEMBER ASSIGNED TO A UNIT UNDER PARAGRAPH**  
13 **(1) OF THIS SUBSECTION SHALL:**

14 **(I) OBSERVE THE PROCUREMENT PROCESSES OF THE UNIT,**  
15 **INCLUDING THE DEVELOPMENT OF A REQUEST FOR PROPOSAL OR REQUEST FOR**  
16 **QUALIFICATIONS AND THE EVALUATION OF BIDS AND OFFERS; AND**

17 **(II) ENSURE THAT THE MINORITY BUSINESS ENTERPRISE**  
18 **PARTICIPATION GOALS ESTABLISHED UNDER § 14–302 OF THE STATE FINANCE AND**  
19 **PROCUREMENT ARTICLE ARE MET TO THE BEST OF THE UNIT’S CAPABILITY.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2020.