

Chapter 588

(Senate Bill 311)

AN ACT concerning

Promoting Efficiencies in State Procurement

FOR the purpose of altering various provisions of the State procurement law; altering the dollar value threshold that triggers the requirement to publish a certain notice in eMaryland Marketplace regarding certain procurements; expanding the list of the types of procurement methods available to a procurement officer for certain procurements; specifying a preferred procurement method for human, social, cultural, or educational services; establishing qualification based selection as the method of procurement for certain departments for architectural or engineering services; specifying certain parameters, standards, and requirements applicable under the qualification based selection procurement method; ~~requiring~~ authorizing certain designated procurement units to adopt the master contracting procurement method for procurements for certain services, supplies, commodities, or goods; providing that certain requirements do not apply to a master contract for construction under certain circumstances; requiring the Board of Public Works to adopt certain regulations regarding the solicitation of master contracts and task orders; repealing the Maryland Architectural and Engineering Services Act and related provisions of law concerning the General Professional Services Selection Board in the Department of General Services; altering the dollar value of the contract for which certain public bodies may require payment security or performance security for a construction contract; clarifying provisions of law concerning procurements by the board of trustees or other persons for a local community college; clarifying the authority of the board of trustees of a community college to advertise certain bids on eMaryland Marketplace; providing that competitive sealed proposals is the preferred procurement method for certain educational or consultant services; defining certain terms; repealing obsolete provisions of law; and generally relating to revisions of the State procurement law.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–203(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 11–203(b), 13–101, 13–102, 13–103, 13–104, 13–109, 13–402, 15–202, and
17–103
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY adding to

Article – State Finance and Procurement
 Section 13–112 and 13–114
 Annotated Code of Maryland
 (2015 Replacement Volume and 2016 Supplement)

BY repealing

Article – State Finance and Procurement
 Section 13–301 through 13–323 and the subtitle “Subtitle 3. Architectural and
 Engineering Services”; and 13–401 and the subtitle “Subtitle 4. Streamlined
 Process for Procurement of Information Technology Services”
 Annotated Code of Maryland
 (2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – Education
 Section 16–311 and 16–313
 Annotated Code of Maryland
 (2014 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

11–203.

(a) Except as provided in subsection (b) of this section, this Division II does not apply to:

(1) procurement by:

(i) the Blind Industries and Services of Maryland;

(ii) the Maryland State Arts Council, for the support of the arts;

(iii) the Maryland Health and Higher Educational Facilities Authority, if no State money is to be spent on a procurement contract;

(iv) the Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Commerce, for training services or programs for new or expanding businesses or industries or businesses or industries in transition;

(v) the Maryland Food Center Authority, to the extent the Authority is exempt under Title 10, Subtitle 2 of the Economic Development Article;

(vi) the Maryland Public Broadcasting Commission:

1. for services of artists for educational and cultural television productions;
2. when planning for or fulfilling the obligations of grants or cooperative agreements that support the educational and cultural activities of the Commission; or
3. for procurement contracts needed to implement the repacking requirements of the Federal Spectrum Incentive Act;

(vii) public institutions of higher education, for cultural, entertainment, and intercollegiate athletic procurement contracts;

(viii) the Maryland State Planning Council on Developmental Disabilities, for services to support demonstration, pilot, and training programs;

(ix) the Maryland Historical Trust for:

1. surveying and evaluating architecturally, archeologically, historically, or culturally significant properties; and
2. other than as to architectural services, preparing historic preservation planning documents and educational material;

(x) the University of Maryland, for University College Overseas Programs, if the University adopts regulations that:

1. establish policies and procedures governing procurement for University College Overseas Programs; and
2. promote the purposes stated in § 11–201(a) of this subtitle;

(xi) the Department of Commerce, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of Maryland and the tourism industry where there will be a private sector contribution to the project of not less than 50% of the total cost of the project, if the project is reviewed by the Attorney General and approved by the Secretary of Commerce or the Secretary's designee;

(xii) the Rural Maryland Council;

(xiii) the Maryland State Lottery and Gaming Control Agency, for negotiating and entering into private sector cooperative marketing projects that directly

enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

1. provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;

2. does not involve the advertising or other promotion of alcohol or tobacco products; and

3. is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee;

(xiv) the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of the Insurance Article;

(xv) the Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State;

(xvi) the Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene for family and individual support services, and individual family care services, as those terms are defined by the Department of Health and Mental Hygiene in regulation;

(xvii) the Department of General Services for the renovation of a structure that:

1. was built during the 18th or 19th century; and

2. is listed in or eligible for listing in the National Register of Historic Places; and

(xviii) the Department of Natural Resources, for negotiating or entering into grants, agreements, or partnerships with nonprofit entities related to conservation service opportunities;

(2) procurement by a unit from:

(i) another unit;

(ii) a political subdivision of the State;

(iii) an agency of a political subdivision of the State;

(iv) a government, including the government of another state, of the United States, or of another country;

(v) an agency or political subdivision of a government; or

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

(3) procurement in support of enterprise activities for the purpose of:

(i) direct resale; or

(ii) remanufacture and subsequent resale.

(b) (1) The following provisions of this Division II apply to each procurement enumerated in subsection (a) of this section:

(i) § 11–205 of this subtitle (“Collusion”);

(ii) § 10–204 of this article (“Approval for designated contracts”);

(iii) Title 12, Subtitle 2 of this article (“Supervision of Capital Expenditures and Real Property Leases”);

(iv) § 13–219 of this article (“Required clauses – Nondiscrimination clause”);

(v) § 13–221 of this article (“Disclosures to Secretary of State”);

(vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for Exempt Units”);

(vii) § 15–112 of this article (“Change orders”);

(viii) Title 16 of this article (“Suspension and Debarment of Contractors”); and

(ix) Title 17 of this article (“Special Provisions – State and Local Subdivisions”).

(2) Except for procurement under subsection (a)(1)(i) and (xi) and (2)(i) and (vi) of this section, the provisions of Title 14, Subtitle 3 of this article (“Minority Business Participation”) shall apply to each procurement enumerated in subsection (a) of this section.

(3) A procurement by an entity listed in subsection (a)(1)(i) through (xiii) and (xvii) of this section shall be made under procedures that promote the purposes stated in § 11–201(a) of this subtitle.

(4) (i) A unit that procures human, social, or educational services from an entity enumerated in subsection (a)(2) of this section shall publish in eMaryland Marketplace notice of a procurement contract or an extension or renewal of a procurement contract if:

1. the procurement contract, extension, or renewal costs more than [~~\$25,000~~] **\$50,000**; and
2. the procurement is made for 3rd party clients described in § 13–106 of this article.

(ii) The notice required under this paragraph shall be published not more than 30 days after the execution and approval of the procurement contract or the extension or renewal of the procurement contract.

(5) The purchase of advisory services from the General Selection Board or the Transportation Selection Board under § 13–305 of this article shall be governed by the Maryland Architectural and Engineering Services Act.

13–101.

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

(B) “DESIGNATED PROCUREMENT UNIT” MEANS:

- (1) THE DEPARTMENT OF BUDGET AND MANAGEMENT;**
- (2) THE DEPARTMENT OF GENERAL SERVICES;**
- (3) THE DEPARTMENT OF INFORMATION TECHNOLOGY; OR**
- (4) THE DEPARTMENT OF TRANSPORTATION.**

[(b)] (C) “eMaryland Marketplace” means the Internet–based procurement system managed by the Department of General Services.

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

(E) “MASTER CONTRACTING” MEANS A STREAMLINED PROCUREMENT METHOD THAT PROVIDES FOR THE QUALIFICATION OF BIDDERS AND OFFERORS FOR THE PROCUREMENT OF SERVICES, SUPPLIES, OR COMMODITIES.

[(d)] (F) (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.

(G) “PERSON” INCLUDES, UNLESS THE CONTEXT REQUIRES OTHERWISE:

(1) THE STATE;

(2) A COUNTY, A MUNICIPAL CORPORATION, OR ANY OTHER POLITICAL SUBDIVISION; AND

(3) ANY UNIT OF THE STATE GOVERNMENT OR A POLITICAL SUBDIVISION.

(H) “TASK ORDER” MEANS A PROCUREMENT PROCESS IN WHICH ONLY THOSE VENDORS WITH MASTER CONTRACTS MAY COMPETE TO PROVIDE THE SERVICES, SUPPLIES, OR COMMODITIES UNDER THE PROCUREMENT.

13–102.

(a) [Except as provided in Subtitle 3 and Subtitle 4 of this title, all procurement by units shall be by competitive sealed bids unless one of the following methods specifically is authorized] THE FOLLOWING PROCUREMENT METHODS ARE AUTHORIZED AT THE PROCUREMENT OFFICER’S DISCRETION, WHERE APPLICABLE:

(1) COMPETITIVE SEALED BIDS UNDER § 13–103 OF THIS SUBTITLE;

[(1)] (2) competitive sealed proposals under § 13–104 or § 13–105 of this subtitle;

[(2)] (3) noncompetitive negotiation under § 13–106 of this subtitle;

[(3)] (4) sole source procurement under § 13–107 of this subtitle;

[(4)] (5) emergency or expedited procurement under § 13–108 of this subtitle;

[(5)] (6) small procurement under § 13–109 of this subtitle;

~~[(6)] (7)~~ an intergovernmental cooperative purchasing agreement under § 13–110 of this subtitle; ~~[or]~~

~~[(7)] (8)~~ auction bids under § 13–111 of this subtitle;

(9) ARCHITECTURAL AND ENGINEERING SERVICES QUALIFICATION BASED SELECTION UNDER § 13–112 OF THIS SUBTITLE; OR

(10) MASTER CONTRACTING UNDER § 13–113 OF THIS SUBTITLE.

(b) (1) In awarding a procurement contract for human, social, cultural, or educational service, the preferred method is by competitive sealed proposals under § 13–104 of this subtitle.

(2) In awarding a procurement contract for a lease of real property, the preferred method is by competitive sealed proposals under § 13–105 of this subtitle.

(3) Procurement under an intergovernmental cooperative purchasing agreement is appropriate in situations where the State is expected to achieve a better price as the result of economies of scale or to otherwise benefit by purchasing in cooperation with another governmental entity.

13–103.

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

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

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

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

(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; and

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

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

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

(ii) direct bidders to submit price bids:

1. with the unpriced technical offers or samples; or

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

(2) A unit shall consider the prices submitted by bidders whose technical 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) [Until July 1, 2006, the] **THE** unit shall publish notice in [the Contract Weekly, Contract Weekly Online, and] eMaryland Marketplace at least 20 days before bid opening if:

(i) the procurement officer reasonably expects bid prices to exceed **[\$25,000] \$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) On and after July 1, 2006, the unit shall publish the notice required under paragraph (3) of this subsection in eMaryland Marketplace.]

[(5)] (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.

(3) A procurement officer may allow a bidder to correct or withdraw a bid 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.

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

(i) is the lowest bid price;

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

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

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

(3) (i) After competitive sealed bids have been opened, 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 the unit or a designee, the procurement officer determines that all bids are unreasonable as to at least 1 requirement and the delay that would result from issuing a new invitation for 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 1 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) As promptly as possible, the procurement officer shall:

1. issue an invitation for revised 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 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 responsible bid or proposal shall include the criteria specified in subsection (a) of this section.

(f) Not more than 30 days after the execution and approval of a procurement contract in excess of [~~\$25,000~~ **\$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 publish notice of the award[:

- and
- (1) until July 1, 2006, in the Contract Weekly and eMaryland Marketplace;
 - (2) on and after July 1, 2006,] in eMaryland Marketplace.

13–104.

(a) Competitive sealed proposals [may be used if:

- (1) the procurement is for human, social, cultural, or educational services;
- (2) with the approval of the head of a unit, the procurement officer determines that specifications cannot be prepared that allow an award based on the lowest bid price, the lowest evaluated bid price or, if the procurement is subject to § 11–202(3) of this article, the bid most favorable to the State; or

(3) the head of the unit determines that:

(i) the need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors awarding procurement contracts on the basis of competitive sealed bids; and

(ii) the use of competitive sealed bidding for that procurement contract is not practicable or not advantageous to the State] **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) 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) the factors, including price, that will be used in evaluating proposals; and

(iii) the relative importance of each factor.

(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 evaluation factors set forth in the request for proposals.

(g) A unit shall publish notice of a contract in excess of ~~[\$25,000]~~ **\$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 [as follows:

- (1) until July 1, 2006, in the Contract Weekly and in eMaryland Marketplace; and
- (2) on and after July 1, 2006,] in eMaryland Marketplace.

13-109.

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

- (1) a unit spends ~~[\$25,000]~~ **\$50,000** or less;
- (2) a contractor provides services subject to § 11-202(3) of this article for expected annual revenues of ~~[\$25,000]~~ **\$50,000** or less; or
- (3) the Department of General Services **OR THE DEPARTMENT OF TRANSPORTATION** is seeking to award a procurement contract for a construction with a value that is ~~[\$50,000]~~ **\$100,000** or less.

(b) A unit may make small procurements in accordance with the regulations of primary procurement units.

(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 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.

13-112.

(A) IN THIS SECTION, "DEPARTMENT" MEANS THE DEPARTMENT OF GENERAL SERVICES OR THE DEPARTMENT OF TRANSPORTATION.

(B) QUALIFICATION BASED SELECTION SHALL ONLY BE USED BY THE DEPARTMENT IF THE PROCUREMENT:

- (1) IS FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES;**
- (2) IS MADE ON A COMPETITIVE BASIS;**
- (3) INCLUDES AN EVALUATION OF THE TECHNICAL PROPOSALS AND QUALIFICATIONS OF AT LEAST TWO PERSONS; AND**
- (4) THE SERVICES CANNOT BE PROVIDED FEASIBLY AND ECONOMICALLY BY EXISTING IN-HOUSE RESOURCES.**

(C) (1) WHENEVER A PROCUREMENT IS BASED ON QUALIFICATION BASED SELECTION, A PROCUREMENT OFFICER SHALL SEEK PROPOSALS BY ISSUING A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.

(2) A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES SHALL INCLUDE A STATEMENT:

(I) DESCRIBING GENERALLY THE ARCHITECTURAL SERVICES OR ENGINEERING SERVICES THAT ARE THE SUBJECT OF THE PROCUREMENT; AND

(II) INDICATING HOW AN INTERESTED PERSON MAY RECEIVE INFORMATION ABOUT THE PROCUREMENT, INCLUDING A COMPREHENSIVE DESCRIPTION OF THE NATURE AND SCOPE OF THE ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.

(D) THE DEPARTMENT SHALL PUBLISH REASONABLE AND TIMELY NOTICE OF A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES IN MARYLAND MARKETPLACE.

(E) THE DEPARTMENT SHALL:

(1) EVALUATE THE TECHNICAL PROPOSALS AND QUALIFICATIONS OF THE PERSONS SUBMITTING THE PROPOSALS; AND

(2) DETERMINE AN ORDER OF PRIORITY BASED ON THOSE EVALUATIONS.

(F) (1) FROM THE RESULTS OF THE SELECTION PROCESS UNDER THIS SECTION, THE DEPARTMENT SHALL:

(I) BEGIN NEGOTIATIONS WITH THE MOST QUALIFIED PERSONS; AND

(II) TRY TO NEGOTIATE A PROCUREMENT CONTRACT WITH THAT PERSON AT A RATE OF COMPENSATION THAT IS FAIR, COMPETITIVE, AND REASONABLE.

(2) IN DETERMINING THE RATE OF COMPENSATION UNDER THIS SUBSECTION, THE DEPARTMENT SHALL:

(I) CONSIDER THE SCOPE AND COMPLEXITY OF THE ARCHITECTURAL SERVICES OR ENGINEERING SERVICES REQUIRED; AND

(II) CONDUCT A DETAILED ANALYSIS OF THE COST OF THOSE SERVICES.

(3) (I) IN DETERMINING THE RATE OF COMPENSATION UNDER THIS SUBSECTION, THE DEPARTMENT OF TRANSPORTATION ALSO SHALL COMPLY WITH LIMITS ON COSTS REIMBURSEMENT, INCLUDING OVERHEAD LIMITS ESTABLISHED BY THE DEPARTMENT.

(II) IN SETTING THE LIMITS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT OF TRANSPORTATION SHALL CONSIDER THE GOAL OF THE SELECTION PROCESS AS WELL AS THE REASONABLE COST OF ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.

(G) IF THE DEPARTMENT IS UNABLE TO NEGOTIATE A SATISFACTORY PROCUREMENT CONTRACT AT A RATE OF COMPENSATION THAT IS FAIR, COMPETITIVE, AND REASONABLE, IT SHALL:

**(1) TERMINATE NEGOTIATIONS WITH THE MOST QUALIFIED PERSON;
AND**

(2) NEGOTIATE IN THE SAME MANNER WITH THE NEXT MOST QUALIFIED PERSON AND, IF NECESSARY, CONTINUE NEGOTIATIONS IN ACCORDANCE WITH THE PROCEDURES UNDER THIS SECTION UNTIL THE AGENCY REACHES AN AGREEMENT.

(H) AFTER OBTAINING ANY APPROVAL REQUIRED BY LAW, THE PROCUREMENT OFFICER SHALL AWARD A PROCUREMENT CONTRACT TO THE MOST QUALIFIED PERSON WITH WHOM AN AGREEMENT WAS REACHED ON COMPENSATION THAT IS FAIR, COMPETITIVE, AND REASONABLE.

(I) NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, THE DEPARTMENT SHALL PUBLISH IN eMARYLAND MARKETPLACE NOTICE OF THE AWARD.

(J) ALL DOCUMENTS RELATING TO THE AWARD OF A PROCUREMENT CONTRACT ARE TO BE MADE AVAILABLE TO THE PUBLIC, INCLUDING:

- (1) TECHNICAL RESUMES;**
- (2) TECHNICAL PROPOSALS;**
- (3) THE PROCUREMENT CONTRACT;**
- (4) SCOPE OF SERVICES;**
- (5) PROGRAMS/PROJECTS;**
- (6) STAFF REPORTS;**
- (7) INTERNAL WORKSHEETS; AND**

(8) ALL OTHER INFORMATION RELATING TO THE NEGOTIATION AND AWARD OF A PROCUREMENT CONTRACT UNDER THIS SECTION.

(K) (1) THE DEPARTMENT SHALL WAIVE THE REQUIREMENTS IN SUBSECTIONS (B), (E), (F), (G), AND (J) OF THIS SECTION IF:

- (I) THE DEPARTMENT DETERMINES THAT:**

1. THE ARCHITECTURAL SERVICES OR ENGINEERING SERVICES CANNOT BE DEFINED SO COMPLETELY AS TO CARRY OUT THOSE REQUIREMENTS; OR

2. THE SPECIFICATIONS REQUIRE ARCHITECTURAL SERVICES OR ENGINEERING SERVICES THAT ARE AVAILABLE ONLY FROM A BONA FIDE SINGLE SOURCE OR A PROPRIETARY PRODUCT OR PROCESS;

(II) THE GOVERNOR DECLARES AN EMERGENCY;

(III) AFTER A NATURAL DISASTER, PUBLIC HEALTH AND SAFETY ARE ENDANGERED; OR

(IV) ON THE RECOMMENDATION OF THE SECRETARY OF THE DEPARTMENT AND A FINDING BY THE GOVERNOR THAT EXTRAORDINARY CIRCUMSTANCES EXIST, THE BOARD OF PUBLIC WORKS DETERMINES THAT:

1. FOR A PARTICULAR PROJECT, URGENT CIRCUMSTANCES REQUIRE THE SELECTION OF A CONTRACTOR ON AN EXPEDITED BASIS;

2. EXPEDITED SELECTION BEST SERVES THE PUBLIC INTEREST; AND

3. THE NEED FOR AN EXPEDITED SELECTION OUTWEIGHS THE BENEFITS OF CARRYING OUT THOSE REQUIREMENTS.

(2) A WAIVER AND THE REASONS FOR IT SHALL BE DOCUMENTED AND:

(I) IMMEDIATELY REPORTED TO EMARYLAND MARKETPLACE FOR PUBLICATION; AND

(II) REPORTED TO THE LEGISLATIVE POLICY COMMITTEE WITHIN 30 DAYS AFTER THE WAIVER OCCURS.

(L) (1) THE DEPARTMENT MAY NOT AWARD A PROCUREMENT CONTRACT TO A PERSON UNDER THIS SUBTITLE UNLESS:

(I) THE PERSON SUBMITS:

1. AN AFFIDAVIT OF NONCOLLUSION; AND

2. A PRICE QUOTATION; AND

(II) FOR A PROCUREMENT CONTRACT COSTING MORE THAN \$200,000, THE PERSON HAS EXECUTED A TRUTH-IN-NEGOTIATION CERTIFICATE.

(2) THE TRUTH-IN-NEGOTIATION CERTIFICATE SHALL STATE THAT:

(I) WAGE RATES AND OTHER FACTUAL UNIT COSTS SUPPORTING WAGES ARE ACCURATE, COMPLETE, AND CURRENT AS OF THE TIME OF CONTRACTING; AND

(II) THE ORIGINAL PRICE OF THE PROCUREMENT CONTRACT AND ANY ADDITIONS TO THE PROCUREMENT CONTRACT WILL BE ADJUSTED TO EXCLUDE ANY SIGNIFICANT PRICE INCREASE IF THE DEPARTMENT DETERMINES THAT THE PRICE INCREASE IS DUE TO WAGE RATES OR OTHER FACTUAL UNIT COSTS THAT WERE INACCURATE, INCOMPLETE, OR NOT CURRENT AS OF THE TIME OF CONTRACTING.

(3) AN ADJUSTMENT TO THE PROCUREMENT CONTRACT SHALL BE MADE WITHIN 1 YEAR AFTER THE PROCUREMENT CONTRACT IS COMPLETED.

(M) THE DEPARTMENT MAY NOT AWARD A PROCUREMENT CONTRACT FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES THAT:

(1) IS A COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT; OR

(2) INCLUDES FEE SCHEDULES THAT ARE BASED ON A PERCENTAGE OF CONSTRUCTION COSTS.

(N) (1) THE STATE MAY POSTAUDIT THE RATES OF CONTRACTORS PERFORMING ARCHITECTURAL SERVICES OR ENGINEERING SERVICES.

(2) ALL RATES USED IN A COST-PLUS-FIXED-FEE PROCUREMENT CONTRACT SHALL BE VERIFIED BY POSTAUDIT IF:

(I) THE COMPENSATION IS MORE THAN \$50,000 AND THE PROCUREMENT CONTRACT INVOLVES A UNIT OTHER THAN A TRANSPORTATION UNIT; AND

(II) THE COMPENSATION IS MORE THAN \$25,000 AND THE PROCUREMENT CONTRACT INVOLVES A TRANSPORTATION UNIT.

(3) ON REQUEST BY A PROCURING AUTHORITY OF ANY POLITICAL SUBDIVISION OF THE STATE THAT IS CONSIDERING AN ARCHITECT OR ENGINEER

FOR A SPECIFIC PROJECT, ANY STATE AUDIT OF THE ARCHITECT OR ENGINEER SHALL BE MADE AVAILABLE.

(O) (1) THE DEPARTMENT MAY TERMINATE WITHOUT LIABILITY A PROCUREMENT CONTRACT FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES IF:

(I) THERE HAS BEEN A CONVICTION OF A CRIME ARISING OUT OF OR IN CONNECTION WITH THE PROCUREMENT CONTRACT OR ANY PAYMENT TO BE MADE UNDER THE PROCUREMENT CONTRACT; OR

(II) THERE HAS BEEN A BREACH OR VIOLATION OF ANY PROVISION OF THIS SUBTITLE.

(2) SUBJECT TO SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT MAY DEDUCT FROM THE PROCUREMENT CONTRACT PRICE OR OTHERWISE RECOVER THE FULL AMOUNT OF ANY FEE, COMMISSION, GIFT, PERCENTAGE, OR OTHER CONSIDERATION PAID IN VIOLATION OF THIS SUBTITLE.

(3) IF A PROCUREMENT CONTRACT IS TERMINATED UNDER THIS SECTION, THE CONTRACTOR:

(I) IS ENTITLED ONLY TO THE EARNED VALUE OF THE WORK COMPLETED AS OF THE DATE OF TERMINATION, PLUS TERMINATION COSTS;

(II) IS LIABLE FOR ANY COSTS INCURRED FOR COMPLETION OF THE WORK OVER THE MAXIMUM AMOUNT PAYABLE TO THE CONTRACTOR UNDER THE PROCUREMENT CONTRACT; AND

(III) SHALL REFUND ALL PROFITS OR FIXED FEES REALIZED UNDER THE PROCUREMENT CONTRACT.

(4) (I) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO ANY OTHER RIGHT OR REMEDY ALLOWED BY LAW.

(II) BY CARRYING OUT THIS SECTION, THE DEPARTMENT DOES NOT WAIVE ANY OTHER RIGHT OR REMEDY PROVIDED BY LAW.

(P) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$20,000 OR IMPRISONMENT NOT EXCEEDING 10 YEARS OR BOTH.

(Q) (1) THE DEPARTMENT OF GENERAL SERVICES AND THE DEPARTMENT OF TRANSPORTATION SHALL ADOPT REGULATIONS THAT PROVIDE SUBSTANTIALLY SIMILAR PROCEDURES TO CARRY OUT THIS SECTION.

(2) THE PROCEDURES OF THE DEPARTMENT SHALL ENSURE THAT A RECOMMENDATION TO THE BOARD OF PUBLIC WORKS FOR THE AWARD OF A PROCUREMENT CONTRACT FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES COSTING OVER \$200,000 IS MADE ON A COMPETITIVE BASIS AND INCLUDES AN EVALUATION OF THE TECHNICAL PROPOSALS AND QUALIFICATIONS OF AT LEAST TWO PERSONS.

[13-402.] **13-113.**

(a) The [Secretary] **DESIGNATED PROCUREMENT UNITS** ~~shall~~ **MAY** adopt **MASTER CONTRACTING**, a streamlined procurement [process for procurement of information technology services that provides] **METHOD, TO PROVIDE** for the qualification of an offeror in one or more categories of [information technology] services, **SUPPLIES, OR COMMODITIES**.

~~(b) The [streamlined procurement process] **MASTER CONTRACTING PROCUREMENT METHOD** adopted by [the Secretary] **EACH DESIGNATED PROCUREMENT UNIT** shall include:~~

(B) IF A DESIGNATED PROCUREMENT UNIT ADOPTS MASTER CONTRACTING, THE MASTER CONTRACTING PROCUREMENT METHOD SHALL INCLUDE:

(1) the categories of [information technology] services, **SUPPLIES, OR COMMODITIES** in which an offeror may submit a proposal for qualification;

(2) a procedure for the consideration and approval of proposals for qualification of [an unlimited number of] **MULTIPLE** offerors in each category of [information technology] services, **SUPPLIES, OR COMMODITIES**;

(3) the execution of a standard contract for a specified period of time between the State and an offeror approved [for qualification in a category of information technology services] **AS A MASTER CONTRACTOR; AND**

(4) [the policies and procedures to be followed by a unit of the Executive Branch in the issuance of a solicitation for a task order for information technology services to a qualified offeror that has executed a contract with the Secretary; and

(5) a performance evaluation procedure to be used by a unit of the Executive Branch to evaluate the performance of a qualified offeror that has completed work on a task order.

(c) (1) A unit of the Executive Branch that requires [information technology] services, **SUPPLIES, OR COMMODITIES COVERED UNDER A MASTER CONTRACT** may issue a solicitation for a task order to a [qualified offeror in the appropriate category of information technology services] **MASTER CONTRACTOR** consistent with [procedures and policies] **THE REGULATIONS** adopted [by the Secretary in subsection (b) of this section] **UNDER § 13–114 OF THIS SUBTITLE.**

(2) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,** **THE** solicitation for a task order shall include a statement of the:

(i) factors that will be used in evaluating a [qualified offeror's] **MASTER CONTRACTOR'S** response; and

(ii) relative importance of each factor.

(d) (1) ~~If~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, IF** the unit of the Executive Branch expects that the total cost of the [information technology] services, **SUPPLIES, OR COMMODITIES** will exceed \$100,000, the unit shall issue a solicitation for a task order to all [qualified offerors] **MASTER CONTRACTORS** in the appropriate category established by the [Secretary] **DESIGNATED PROCUREMENT UNIT.**

(2) If the unit of the Executive Branch expects that the total cost of the [information technology services] **SERVICES, SUPPLIES, OR COMMODITIES** will be \$100,000 or less, the unit shall issue a solicitation for a task order to a minimum of six qualified [offerors] **MASTER CONTRACTORS** or all [qualified offerors] **MASTER CONTRACTORS**, whichever is less, in the appropriate category established by the [Secretary] **DESIGNATED PROCUREMENT UNIT.**

(e) ~~After~~ **EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, AFTER** a unit of the Executive Branch receives responses from [qualified offerors] **MASTER CONTRACTORS** to a solicitation for a task order, the unit shall evaluate the responses and may select [an offeror] **A MASTER CONTRACTOR** based on the response that is determined to be the most advantageous to the State considering the evaluation factors set forth in the task order.

(F) THE REQUIREMENTS OF SUBSECTIONS (C)(2), (D), AND (E) OF THIS SECTION DO NOT APPLY TO A MASTER CONTRACT FOR CONSTRUCTION IF THE MASTER CONTRACT:

(1) IS AWARDED THROUGH A COMPETITIVE PROCESS IN ACCORDANCE WITH THIS SUBTITLE; AND

(2) STATES:

(I) HOW TASK ORDERS WILL BE AWARDED; AND

(II) THE MAXIMUM NUMBER OF QUALIFIED CONTRACTORS THAT WILL BE AWARDED A MASTER CONTRACT FOR CONSTRUCTION.

13-114.

(A) THE BOARD SHALL ADOPT REGULATIONS IN ACCORDANCE WITH TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE TO ESTABLISH A UNIFORM PROCESS FOR THE SOLICITATION OF MASTER CONTRACTS AND TASK ORDERS.

(B) EACH DESIGNATED PROCUREMENT UNIT SHALL ENSURE COMPLIANCE WITH THE REGULATIONS SET FORTH IN SUBSECTION (A) OF THIS SECTION.

[Subtitle 3. Architectural and Engineering Services.]

[13-301.

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

(b) “General Selection Board” means the General Professional Services Selection Board.

(c) “Person” includes, unless the context requires otherwise:

(1) the State;

(2) a county, municipal corporation, or other political subdivision; and

(3) any unit of the State government or a political subdivision.

(d) “Selection Board” means the General Selection Board or the Transportation Selection Board.

(e) “Transportation Selection Board” means the Transportation Professional Services Selection Board.

(f) “Transportation unit” means:

(1) the Department of Transportation;

(2) any unit in the Department of Transportation;

(3) the Maryland Port Commission; or

(4) the Maryland Transportation Authority.]

[13–302.

(a) There is a General Professional Services Selection Board in the Department of General Services.

(b) (1) The General Selection Board consists of:

(i) 4 permanent members; and

(ii) 1 temporary member.

(2) The permanent members shall be:

(i) the Secretary of General Services, ex officio, or a designee; and

(ii) 3 members who are appointed by the Governor and shall be:

1. 1 appointee from the Department of General Services on recommendation of the Secretary of General Services; and

2. 2 appointees from the general public, at least 1 of whom is not an architect or engineer.

(3) The temporary member shall be the head of the unit whose request is under consideration.

(4) On recommendation of the Secretary of General Services, the Governor may appoint an alternate member to serve in the absence of the appointee under paragraph (2)(ii)1 of this subsection.

(c) (1) The appointee from the Department of General Services serves at the pleasure of the Governor.

(2) An appointee from the general public:

(i) serves a term of 5 years; and

(ii) at the end of the term, continues to serve until a successor is appointed and qualifies.

(3) A temporary member serves only for the purpose of considering and acting on the request of the unit that the temporary member represents.

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

(d) (1) The Governor may remove a member for incompetence, misconduct, neglect of duty, or other sufficient cause.

(2) A member may not participate in any matter before the General Selection Board in which the member:

(i) has an interest; or

(ii) is or, within the previous 12 months, has been associated with:

1. a transportation unit that has an interest in the matter;

or

2. any other person who is not a unit and has an interest in

the matter.

(e) Each appointee from the general public is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.]

[13–303.

(a) There is a Transportation Professional Services Selection Board in the Department of Transportation.

(b) (1) The Transportation Selection Board consists of:

(i) 4 individuals who are permanent members; and

(ii) 1 individual who is a temporary member.

(2) The permanent membership shall consist of the following:

(i) the Secretary of Transportation, ex officio, or a designee;

(ii) 1 individual from the Department of Transportation, appointed by the Governor on recommendation of the Secretary of Transportation; and

(iii) 2 individuals appointed by the Governor from the general public, at least 1 of whom is not an architect or engineer.

(3) The transportation unit whose request the Transportation Selection Board is considering shall appoint the temporary member.

(4) On recommendation of the Secretary of Transportation, the Governor may appoint an alternate member to serve in the absence of the appointee under paragraph (2)(ii) of this subsection.

(c) (1) The appointee from the Department of Transportation serves at the pleasure of the Governor.

(2) An appointee from the general public:

(i) serves a term of 5 years; and

(ii) at the end of the term, continues to serve until a successor is appointed and qualifies.

(3) A temporary member serves only for the purpose of considering and acting on the request of the transportation unit that the temporary member represents.

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

(d) (1) The Governor may remove a member for incompetence, misconduct, neglect of duty, or other sufficient cause.

(2) A member may not participate in any matter before the Transportation Selection Board in which the member:

(i) has an interest; or

(ii) is or, within the previous 12 months, has been associated with a person, other than a transportation unit, who has an interest in the matter.

(e) Each appointee from the general public is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.]

[13–304.

(a) The selection boards shall adopt regulations that provide substantially similar procedures to carry out this subtitle.

(b) The procedures of each selection board shall ensure that a recommendation to the Board of Public Works for the award of a procurement contract for architectural or engineering services costing over \$200,000 is made on a competitive basis and includes an evaluation of the technical proposals and qualifications of at least 2 persons.]

[13–305.

(a) At the request of a school board or a political subdivision of the State, the Selection Board may provide advisory services about procurement of architectural services or engineering services.

(b) A school board or political subdivision that receives advisory services under this section shall reimburse the Selection Board for its costs.]

[13–306.

(a) Except for a transportation unit, a unit that intends to procure architectural or engineering services costing more than \$200,000 shall submit a request to the General Selection Board at a public meeting of that Board.

(b) The General Selection Board shall publish reasonable and timely notice of a request presented under this section.]

[13–307.

(a) The General Selection Board may approve a request for architectural or engineering services only if it concludes that the services cannot be provided feasibly and economically by existing in-house resources.

(b) The General Selection Board shall:

(1) publish uniform and consistent announcements of all approvals for requests for architectural services or engineering services; and

(2) mail a copy of an announcement to each person who requests notice.

(c) An announcement of an approval under this section shall:

(1) describe generally the architectural services or engineering services that are the subject of the procurement; and

(2) indicate how an interested person may receive information about the procurement.

(d) (1) On request, the General Selection Board shall provide to an interested person a comprehensive description of the nature and scope of the architectural or engineering services that are the subject of the procurement.

(2) The unit requesting the procurement shall prepare the description required under this subsection.]

[13–308.

(a) The General Selection Board shall:

(1) evaluate technical proposals and the qualifications of the persons submitting proposals; and

(2) determine an order of priority based on those evaluations.

(b) (1) The General Selection Board shall:

(i) begin negotiations with the most qualified person; and

(ii) try to negotiate a procurement contract with that person at a rate of compensation that is fair, competitive, and reasonable.

(2) In determining the rate of compensation under this subsection, the General Selection Board shall:

(i) consider the scope and complexity of the architectural or engineering services required; and

(ii) conduct a detailed analysis of the cost of those services.

(c) (1) If the General Selection Board is unable to negotiate a satisfactory procurement contract at a rate of compensation that is fair, competitive, and reasonable, it shall:

(i) terminate negotiations with the most qualified person; and

(ii) negotiate in the same manner with the second and, if necessary, the third most qualified person chosen under subsection (a) of this section.

(2) If the General Selection Board is unable to negotiate a procurement contract with any person chosen under subsection (a) of this section, the General Selection Board shall:

(i) choose additional persons in order of their competence and qualification; and

(ii) continue negotiations in accordance with the procedures under this section until it reaches an agreement.

(d) The General Selection Board may delegate the negotiation process to the Department of General Services, but any negotiating team shall include a representative of the unit requesting the procurement.]

[13–309.

The General Selection Board shall:

- (1) review all procurement contract documents; and
- (2) announce the general content of the documents at a public meeting of that Board.]

[13–310.

(a) (1) A transportation unit that intends to procure architectural or engineering services shall submit a request to the Secretary of Transportation.

(2) The Secretary of Transportation shall certify to the Transportation Selection Board that the architectural or engineering services requested under this section cannot be provided feasibly and economically by existing in-house resources.

(b) The Transportation Selection Board shall:

- (1) publish uniform and consistent announcements of all requests for architectural services or engineering services; and
- (2) mail a copy of an announcement to each person who requests notice of a specific project.

(c) An announcement of a request under this section shall:

- (1) describe generally the architectural or engineering services that are the subject of the procurement; and
- (2) indicate how an interested person may receive information about the procurement.

(d) A transportation unit shall negotiate competitively each procurement contract for architectural or engineering services costing \$200,000 or less at a price that the transportation unit determines to be fair and reasonable.]

[13–311.

(a) The Department of Transportation shall establish a selection process based on a competitive procedure to:

(1) promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing architectural or engineering services;

(2) evaluate technical proposals and the qualifications of the persons submitting proposals; and

(3) determine an order of priority based on those evaluations.

(b) (1) From the results of the selection process under subsection (a) of this section, the transportation unit shall:

(i) begin negotiations with the most qualified person; and

(ii) try to negotiate a procurement contract with that person at a rate of compensation that is fair, competitive, and reasonable.

(2) In determining the rate of compensation under this subsection, the transportation unit shall:

(i) consider the scope and complexity of the architectural or engineering services required;

(ii) conduct a detailed analysis of the cost of those services; and

(iii) comply with limits on costs reimbursement, including, but not limited to overhead limits, established by the Transportation Selection Board. In setting such limits, the Board shall consider the goal of the selection process set forth in paragraph (1) of this subsection, as well as the reasonable cost of architectural or engineering services.

(c) (1) If the transportation unit is unable to negotiate a satisfactory procurement contract at a rate of compensation that is fair, competitive, and reasonable, it shall:

(i) terminate negotiations with the most qualified person; and

(ii) negotiate in the same manner with the second and, if necessary, the third most qualified person chosen under subsection (a) of this section.

(2) If the transportation unit is unable to negotiate a procurement contract with any person chosen under subsection (a) of this section, the transportation unit shall:

(i) choose additional persons in order of their competence and qualification; and

(ii) continue negotiations in accordance with the procedures under this section until it reaches an agreement.

(d) The Transportation Selection Board may delegate the negotiation process to the Department of Transportation, but any negotiating team shall include a representative of the transportation unit requesting the procurement.]

[13–312.

(a) A transportation unit shall submit to the Transportation Selection Board the name of the person with whom an agreement for the procurement of architectural services or engineering services is reached in accordance with § 13–311 of this subtitle.

(b) The Transportation Selection Board shall:

(1) review all procurement contract documents; and

(2) announce the general content of the documents at a public meeting of that Board.

(c) (1) The Transportation Selection Board shall hold a public meeting at which that Board shall:

(i) accept or reject the person with whom the agreement was reached; or

(ii) for cause, postpone its decision on the selection.

(2) The Transportation Selection Board shall provide reasonable and timely notice of a meeting required under this subsection.]

[13–313.

The Selection Board shall make available for public review all documents that relate to the award of a procurement contract, including:

(1) technical resumes;

(2) proposals;

(3) the procurement contract;

- (4) scope of services;
- (5) programs;
- (6) staff reports;
- (7) internal worksheets; and
- (8) all other information that relates to the negotiation and award of a procurement contract under this subtitle.]

[13-314.

(a) The Selection Board shall waive the requirements of §§ 13-304(b), 13-308, 13-309, 13-311, 13-312(b), and 13-313 of this subtitle if:

- (1) the Selection Board determines that:
 - (i) the architectural services or engineering services cannot be defined so completely as to carry out those requirements; or
 - (ii) the specifications require architectural services or engineering services that are available only from a bona fide single source or a proprietary product or process;
- (2) the Governor declares an emergency;
- (3) after a natural disaster, public health and safety are endangered; or
- (4) on the recommendation of the Secretary of General Services or the Secretary of Transportation and a finding by the Governor that extraordinary circumstances exist, the Board of Public Works determines that:
 - (i) for a particular project, urgent circumstances require the selection of a contractor on an expedited basis;
 - (ii) expedited selection best serves the public interest; and
 - (iii) the need for an expedited selection outweighs the benefits of carrying out those requirements.

(b) A waiver and the reasons for it shall be documented and:

- (1) immediately reported to eMaryland Marketplace for publication; and

(2) reported to the Legislative Policy Committee within 30 days after the waiver occurs.]

[13–315.

(a) (1) After choosing a contractor in accordance with this subtitle, the Selection Board shall recommend that contractor to the Board of Public Works.

(2) With each recommendation, the Selection Board shall submit a statement of the reasons for the selection.

(3) The statement required under this subsection serves as a public notice of the selection.

(b) The Selection Board shall assure the Board of Public Works that the recommended contractor has the financial capacity to:

(1) provide the architectural services or engineering services; and

(2) protect the State from errors and omissions that might arise from the performance of the architectural or engineering services by:

(i) the contractor; or

(ii) third parties relying on the completed design or work product.]

[13–316.

(a) Within 10 days after an offeror of architectural services or engineering services receives notice of a recommendation by the Selection Board to the Board of Public Works, the offeror may appeal the recommendation to the Board of Public Works.

(b) On an appeal under this section, the Board shall:

(1) approve the recommendation;

(2) disapprove the recommendation; or

(3) remand the matter to the Selection Board for further consideration.

(c) The Board of Public Works may award a prospective offeror or an offeror the reasonable costs of filing and pursuing an appeal, not including attorney's fees, if:

(1) the prospective offeror or offeror appeals the recommendation of the Transportation Selection Board or the General Selection Board to enter into an architectural services or engineering services contract to the Board of Public Works;

(2) the Board of Public Works disapproves the recommendation of the Transportation Selection Board or the General Selection Board; and

(3) the Board of Public Works finds that there has been a violation of the procurement law or regulations.

(d) The Board of Public Works shall adopt regulations to implement this section and to determine what constitutes reasonable costs of filing and pursuing an appeal.]

[13–317.

(a) A unit may not award a procurement contract to a person under this subtitle unless:

(1) the person submits:

(i) an affidavit of noncollusion; and

(ii) a price quotation; and

(2) for a procurement contract costing more than \$200,000, the person has executed a truth-in-negotiation certificate.

(b) The truth-in-negotiation certificate shall state that:

(1) wage rates and other factual unit costs supporting wages are accurate, complete, and current as of the time of contracting; and

(2) the original price of the procurement contract and any additions to the procurement contract will be adjusted to exclude any significant price increase if the Selection Board determines that the price increase is due to wage rates or other factual unit costs that were inaccurate, incomplete, or not current as of the time of contracting.

(c) An adjustment to the procurement contract shall be made within 1 year after the procurement contract is completed.]

[13–318.

The Selection Board may not award a procurement contract for architectural services or engineering services that:

(1) is a cost-plus-a-percentage-of-cost contract; or

(2) includes fee schedules that are based on a percentage of construction costs.]

[13-320.

(a) (1) The State may postaudit the rates of contractors performing architectural services or engineering services under this subtitle as required by the regulations adopted under this subtitle.

(2) All rates used in a cost-plus-fixed-fee procurement contract shall be verified by postaudit if:

(i) the compensation is more than \$50,000 and the procurement contract involves a unit other than a transportation unit; and

(ii) the compensation is more than \$25,000 and the procurement contract involves a transportation unit.

(b) On request by a procuring authority of any political subdivision of the State that is considering an architect or engineer for a specific project, any State audit of the architect or engineer shall be made available.]

[13-321.

(a) The Board may terminate without liability a procurement contract for architectural services or engineering services if:

(1) there has been a conviction of a crime arising out of or in connection with the procurement contract or any payment to be made under the procurement contract; or

(2) there has been a breach or violation of any provision of this subtitle.

(b) Subject to subsection (a) of this section, the Board may deduct from the procurement contract price or otherwise recover the full amount of any fee, commission, gift, percentage, or other consideration paid in violation of this subtitle.

(c) If a procurement contract is terminated under this section, the contractor:

(1) is entitled only to the earned value of the work completed as of the date of termination, plus termination costs;

(2) is liable for any costs incurred for completion of the work over the maximum amount payable to the contractor under the procurement contract; and

(3) shall refund all profits or fixed fees realized under the procurement contract.

(d) (1) The provisions of this section are in addition to any other right or remedy allowed by law.

(2) By carrying out this section, the Board does not waive any other right or remedy provided by law.]

[13–322.

A person who violates any provision of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 10 years or both.]

[13–323.

This subtitle may be cited as the “Maryland Architectural and Engineering Services Act”.]

[Subtitle 4. Streamlined Process for Procurement of Information Technology Services.]

[13–401.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Information technology” has the meaning stated in § 3A–301 of this article.
- (c) “Secretary” means the Secretary of Information Technology.]

15–202.

[This] **EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY THE BOARD, THIS** subtitle does not apply to a protest concerning[:

(1) except for a protest relating to a violation of § 13–212.1 of this article, the formation of a procurement contract for architectural services or engineering services; or

(2) except to the extent authorized by regulation by the Board,] any act or omission by a procurement agency under Title 14, Subtitle 6 of this article.

17–103.

(a) (1) Before a public body awards a construction contract exceeding \$100,000, the contractor shall provide payment security and performance security that meet the requirements of § 17–104 of this subtitle.

(2) The security shall be:

(i) for performance security, in an amount that the public body considers adequate for its protection; and

(ii) for payment security, at least 50% of the total amount payable under the contract.

(b) A public body, other than the State or a unit of the State government, may require payment security or performance security for a construction contract if:

(1) the contract exceeds ~~[\$25,000]~~ **\$50,000** but does not exceed \$100,000;
and

(2) the amount of the security does not exceed 50% of the contract amount.

Article – Education

16–311.

(a) (1) Except as provided in paragraph (2) of this subsection, this section applies to every contract for any building, improvement, equipment, or supplies.

(2) This section does not apply to:

(i) The purchase of books or other materials for instruction;

(ii) Emergency repairs;

(iii) Any contract or purchase made by a county for a community college under procedures authorized by the county charter or an act of the General Assembly; or

(iv) Any contract or purchase that qualifies as a “small procurement” as defined in the State Procurement Regulations.

(b) [All procurements shall be by competitive sealed bids, as described in this section, unless one of the following methods is specifically authorized] **AT THE DISCRETION OF THE PROCUREMENT OFFICER, THE FOLLOWING PROCUREMENT METHODS ARE AUTHORIZED WHERE APPLICABLE:**

(1) COMPETITIVE SEALED BIDS UNDER SUBSECTION (C) OF THIS SECTION;

~~(1)~~ **(2)** Competitive sealed proposals under § 16–313 of this subtitle;

[(2)] (3) Sole source procurement under § 16–314 of this subtitle; or

[(3)] (4) Noncompetitive negotiation under § 16–314.1 of this subtitle.

(c) (1) **THE BOARD OF TRUSTEES MAY PROVIDE FOR PROCUREMENT BY COMPETITIVE SEALED BIDS IN ACCORDANCE WITH THIS SUBSECTION.**

(2) (I) **WHENEVER PROCUREMENT IS BASED ON COMPETITIVE SEALED BIDS, THE BOARD OF TRUSTEES, OR ITS DESIGNEE, SHALL SEEK BIDS BY ISSUING AN INVITATION FOR BIDS.**

[(1)] (II) The board of trustees, at least 2 weeks before bids are to be filed, shall advertise for bids in at least one newspaper published in the county **OR IN EMARYLAND MARKETPLACE, IN ACCORDANCE WITH TITLE 17, SUBTITLE 5 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

[(2)] (III) The board of trustees may name in the specifications and advertisements for bids the particular make, kind, or brand of article to be contracted for or purchased.

[(d) (1)] (3) The board of trustees of each community college may provide for the prequalification of persons as prospective responsible bidders for procurements other than leases of real property.

[(2)] (4) If a board of trustees uses a prequalification procedure for awarding a procurement contract:

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

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

1. A person who was not prequalified at the time of bid opening or receipt of proposals is a responsible bidder; or

2. A prequalified person is not a responsible bidder.

[(e) (1)] (5) Except as provided in [subsection (f)] **PARAGRAPH (7)** of this [section] **SUBSECTION**, the contract shall be awarded to the lowest responsible bidder, who conforms to the specifications, with consideration given to:

(i) The quantities involved;

(ii) The time required for delivery;

- (iii) The purpose for which required;
- (iv) The competence and responsibility of the bidder; and
- (v) The ability of the bidder to perform the contract satisfactorily.

[(2)] (6) The board of trustees may reject any and all bids and readvertise for other bids.

[(f) (1)] (7) (I) In this **[subsection] PARAGRAPH**, the term “minority business enterprise” has the meaning stated in § 14–301 of the State Finance and Procurement Article.

[(2)] (II) In Montgomery County, by resolution and by implementing rules and regulations, the Board of Trustees of Montgomery Community College shall establish a mandatory minority business utilization program to facilitate the participation of responsible certified minority business enterprises in contracts awarded by the Board of Trustees of Montgomery Community College in accordance with competitive bidding requirements.

[(h)] (D) A contract entered into or purchase made in violation of this section is void.

16–313.

(a) (1) The board of trustees may provide for procurement by competitive sealed proposals in accordance with the provisions of this section.

(2) The board of trustees may adopt regulations to implement the provisions of this section.

(b) Competitive sealed proposals **[may be used if:**

(1) The procurement is for educational or consultant services;

(2) The procurement is for any building, improvement, equipment, or supplies and the board of trustees or its designee determines that specifications cannot be prepared that allow an award based on the lowest bid price, the lowest evaluated bid price, or the bid most favorable to the college; or

(3) The board of trustees or its designee determines that:

(i) The need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors awarding procurement contracts on the basis of competitive sealed bids; and

(ii) The use of competitive sealed bidding for that procurement contract is not practicable or not advantageous to the college] **IS THE PREFERRED PROCUREMENT METHOD FOR EDUCATIONAL OR CONSULTANT SERVICES.**

(c) (1) Whenever procurement is based on competitive sealed proposals, the board of trustees or its designee shall seek proposals by issuing a request for proposals.

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

- (i) The scope of the procurement contract;
- (ii) The results to be achieved or services to be provided;
- (iii) The factors, including price, that will be used in evaluating proposals; and
- (iv) The relative importance of each factor.

(d) The board of trustees or its designee shall publish a request for proposals in the same manner as required for an invitation for bids.

(e) (1) After receipt of proposals but before the board of trustees awards the procurement contract, the board or its designee may conduct discussions with an offeror to:

- (i) Obtain the best price for the college; and
- (ii) Ensure full understanding of:
 - 1. The requirements of the college as set forth in the request for proposals; and
 - 2. The proposal submitted by the offeror.

(2) If discussions are conducted, the board of trustees or its designee:

- (i) Shall conduct the discussions in accordance with regulations adopted by the board;
- (ii) Shall provide an opportunity to participate to each responsible offeror who submits a proposal that, in the judgment of the board or its designee, is reasonably susceptible of being selected for award;
- (iii) Shall treat all of the responsible offerors fairly and equally;

(iv) May allow all of the 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 college to do so;

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

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

(f) (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) The board of trustees or its designee may allow an offeror to correct or withdraw a proposal or best and final offer if correction or withdrawal is allowed under regulations adopted by the board.

(g) After obtaining any approval required by law, the board of trustees 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 college considering the evaluation factors set forth in the request for proposals.

(h) The board of trustees may reject any and all proposals and readvertise for other offers.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, May 25, 2017.