

HOUSE BILL 649

P2

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By: **Chair, Health and Government Operations Committee (By Request – Departmental – General Services)**

Introduced and read first time: January 29, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement – Procedures**

3 FOR the purpose of requiring Maryland Correctional Enterprises to determine the
4 prevailing average market price of certain supplies and services that are available
5 from Maryland Correctional Enterprises; requiring the Pricing and Selection
6 Committee for Blind Industries and Services of Maryland, the Employment Works
7 Program, and Maryland Correctional Enterprises to review and verify the prevailing
8 average market prices of certain supplies and services; altering the duties of the
9 Department of Information Technology relating to procurement; altering the persons
10 who may be designated by certain members of the Procurement Improvement
11 Council to attend a certain meeting; altering the list of units that are defined as
12 “designated procurement units”; renaming eMaryland Marketplace to be eMaryland
13 Marketplace Advantage; altering the procedures used by certain units when
14 procuring certain supplies and services; altering the name and duties of a certain
15 Pricing and Selection Committee; providing that certain provisions relating to the
16 use of eMaryland Marketplace Advantage do not apply to certain emergency
17 procurements; altering certain definitions; making certain stylistic changes;
18 requiring the publisher of the Annotated Code of Maryland, in consultation with and
19 subject to the approval of the Department of Legislative Services, to correct any
20 cross-references or terminology rendered incorrect by this Act and to describe any
21 corrections made in an editor’s note following the section affected; and generally
22 relating to State procurement.

23 BY repealing and reenacting, with amendments,
24 Article – Correctional Services
25 Section 3–515
26 Annotated Code of Maryland
27 (2017 Replacement Volume and 2019 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Finance and Procurement

Section 3A–301, 3A–401, 12–105, 13–101, 13–111, 14–106, 14–107, and 17–502

Annotated Code of Maryland

(2015 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 – Correctional Services

3–515.

(a) A unit of State government shall purchase from Maryland Correctional Enterprises any [goods] **SUPPLIES** or services that are available from Maryland Correctional Enterprises and that Maryland Correctional Enterprises can provide at a price not exceeding the prevailing average market price as determined by the [Department of General Services] **MARYLAND CORRECTIONAL ENTERPRISES**.

(b) **THE PRICING AND SELECTION COMMITTEE FOR BLIND INDUSTRIES AND SERVICES OF MARYLAND, THE EMPLOYMENT WORKS PROGRAM, AND MARYLAND CORRECTIONAL ENTERPRISES SHALL REVIEW AND VERIFY THE PREVAILING AVERAGE MARKET PRICES, AS DETERMINED BY MARYLAND CORRECTIONAL ENTERPRISES, OF NEW AND EXISTING SUPPLIES AND SERVICES THAT ARE AVAILABLE FROM MARYLAND CORRECTIONAL ENTERPRISES.**

(c) (1) The contracting unit shall inform each unit of State government for which it procures [goods] **SUPPLIES** or services within 60 days after the award of a contract.

(2) Quarterly, each unit that requires [goods] **SUPPLIES** or services for its operations shall inform Maryland Correctional Enterprises of its anticipated orders during the next 3–month period.

(3) If Maryland Correctional Enterprises is unable to provide any of the [goods] **SUPPLIES** or services under the contract, Maryland Correctional Enterprises shall notify the contracting unit so that appropriate alternative action may be taken to meet the needs of units of State government for which the contracting unit procures [goods] **SUPPLIES** or services.

[(c)] (D) The Board of Public Works:

(1) shall suspend the application of subsection (a) of this section if the Board of Public Works finds that the purposes of Division II of the State Finance and Procurement Article are being unduly eroded due to the volume and scope of activities and sales by Maryland Correctional Enterprises; and

(2) may suspend the application of subsection (a) of this section for data entry services that involve information that is protected from disclosure under Title 4 of the General Provisions Article.

Article – State Finance and Procurement

3A-301.

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

(b) (1) “Development” means all expenditures for a new information technology system or an enhancement to an existing system including system:

(i) planning;

(ii) [procurement;

(iii)] creation;

[(iv)] (III) installation;

[(v)] (IV) testing; and

[(vi)] (V) initial training.

(2) “Development” does not include:

(i) ongoing operating costs, software or hardware maintenance, routine upgrades, or modifications that merely allow for a continuation of the existing level of functionality; or

(ii) expenditures made after a new or enhanced system has been legally accepted by the user and is being used for the business process for which it was intended.

(c) “Fund” means the Major Information Technology Development Project Fund.

(d) “Information technology” means all electronic information processing [hardware and software], including:

(1) maintenance;

(2) telecommunications; [and]

(3) **HARDWARE;**

(4) SOFTWARE; AND

[(3)] (5) associated [consulting] services.

(e) “Information technology services” means information provided by electronic means by or on behalf of a unit of State government.

(f) “Major information technology development project” means any information technology development project that meets one or more of the following criteria:

(1) the estimated total cost of development equals or exceeds \$1,000,000;

(2) the project is undertaken to support a critical business function associated with the public health, education, safety, or financial well-being of the citizens of Maryland; or

(3) the Secretary determines that the project requires the special attention and consideration given to a major information technology development project due to:

(i) the significance of the project’s potential benefits or risks;

(ii) the impact of the project on the public or local governments;

(iii) the public visibility of the project; or

(iv) other reasons as determined by the Secretary.

(g) “Master plan” means the statewide information technology master plan.

(h) “Nonvisual access” means the ability, through keyboard control, synthesized speech, Braille, or other methods not requiring sight to receive, use, and manipulate information and operate controls necessary to access information technology in accordance with standards adopted under § 3A–303(b) of this subtitle.

(i) “Resource sharing” means the utilization of a State resource by private industry in exchange for the provision to the State of a communication service or other consideration.

(j) “Systems development life cycle plan” means a plan that defines all actions, functions, or activities to be performed by a unit of State government in the definition, planning, acquisition, development, testing, implementation, operation, enhancement, and modification of information technology systems.

3A–401.

(a) The Department shall:

(1) coordinate the development, [procurement,] management, and operation of telecommunication equipment, systems, and services by State government;

(2) acquire and manage common user telecommunication equipment, systems, or services and charge units of State government for their proportionate share of the costs of installation, maintenance, and operation of the common user telecommunication equipment, systems, or services;

(3) promote compatibility of telecommunication systems by developing policies, procedures, and standards for the acquisition and use of telecommunication equipment, systems, and services by units of State government;

(4) coordinate State government telecommunication systems and services by reviewing requests by units of State government for telecommunication equipment, systems, or services;

(5) advise units of State government about planning, acquisition, and operation of telecommunication equipment, systems, or services; and

(6) provide radio frequency coordination for State and local governments in accordance with regulations of the Federal Communications Commission.

(b) The Department may make arrangement for a user other than a unit of State government to have access to and use of State telecommunication equipment, systems, and services and shall charge the user any appropriate amount to cover the cost of installation, maintenance, and operation of the telecommunication equipment, system, or service provided.

12-105.

(a) In this section, "Council" means the Procurement Improvement Council.

(b) There is a Procurement Improvement Council.

(c) (1) The Council consists of the following 12 members:

(i) the State Treasurer;

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

(iii) the Secretary of Budget and Management;

(iv) the Chief Procurement Officer;

(v) the Secretary of Information Technology;

(vi) the Secretary of Transportation;

(vii) the Procurement Advisor of the Board;

(viii) the Special Secretary for the Office of Small, Minority, and Women Business Affairs;

(ix) the Director of the Governor's Office of Performance Improvement;

(x) 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

(xi) 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 Council, the Treasurer may designate the Deputy Treasurer to attend the meeting.

(ii)] If a member of the Council listed in paragraph [(1)(ii)] **(1)(I)** through [(ix)] **(X)** of this subsection is unable to attend a meeting of the Council, the member may designate a senior management staff member with experience in procurement to attend the meeting.

(d) The Chief Procurement Officer is Chairman of the Council.

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

(f) The Chief Procurement Officer is the principal staff of the Council and the Council shall have any additional staff authorized 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, including policies, procedures, and forms for all procurement activity and contract management;

(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, including:

(i) procurement officer training;

(ii) risk analysis and insurance requirements;

(iii) management of eMaryland Marketplace **ADVANTAGE** and other Internet procurement resources;

(iv) use of intergovernmental cooperative purchasing agreements; and

(v) any other issues or problems identified by the Council;

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

(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; and

(6) advise the General Assembly on proposed legislation in order to enhance the efficiency and transparency of State procurement.

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)] (2) the Department of Transportation.

(c) “eMaryland Marketplace **ADVANTAGE**” means the Internet-based procurement system [jointly] managed by the Department of General Services [and the Department of Information Technology].

(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.

(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.

13–111.

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

(b) (1) Whenever the head of a [primary] **DESIGNATED** 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.

(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.

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

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

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

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

(2) A procurement officer shall:

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

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

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

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

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

1 (5) 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
4 applicable to an invitation for bids; and

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

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

9 (i) is the lowest bid price; or

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

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

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

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

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

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

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

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

32 1. issue an invitation for revised auction bids, which shall
33 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 in eMaryland Marketplace **ADVANTAGE**.

14–106.

(a) In this section, “Committee” means the Pricing and Selection Committee for Blind Industries and Services of Maryland [and], the Employment Works Program, **AND MARYLAND CORRECTIONAL ENTERPRISES**.

(b) There is a Pricing and Selection Committee for Blind Industries and Services of Maryland [and], the Employment Works Program, **AND MARYLAND CORRECTIONAL ENTERPRISES**.

(c) The Committee consists of the following 5 members:

(1) the Secretary of Transportation or a designee;

(2) the Secretary of General Services or a designee;

(3) the Secretary of Public Safety and Correctional Services or a designee;

(4) the Assistant Secretary for Vocational Rehabilitation within the State Department of Education or a designee; and

(5) the Secretary of Labor or a designee.

(d) A member of the Committee:

1 (1) may not receive compensation; but

2 (2) is entitled to reimbursement for expenses under the Standard State
3 Travel Regulations as provided in the State budget.

4 (e) (1) Blind Industries and Services of Maryland shall provide staff for the
5 Committee.

6 (2) The staff provided in accordance with paragraph (1) of this subsection
7 shall:

8 (i) be a blind or a visually impaired associate of Blind Industries
9 and Services of Maryland; and

10 (ii) complete work related to the duties of the Committee regarding
11 Blind Industries and Services of Maryland under the supervision and direction of the
12 Committee.

13 (f) The Committee shall:

14 (1) ensure that supplies and services provided by Blind Industries and
15 Services of Maryland or a community service provider create work opportunities for
16 individuals who have a mental or physical disability, including blindness, for which Blind
17 Industries and Services of Maryland or the community service provider was established to
18 assist;

19 (2) set the prices of supplies and services that Blind Industries and
20 Services of Maryland provides to reflect the fair market prices for the supplies and services;

21 **(3) REVIEW AND VERIFY THE PREVAILING AVERAGE MARKET PRICES,**
22 **AS DETERMINED BY MARYLAND CORRECTIONAL ENTERPRISES, OF NEW AND**
23 **EXISTING SUPPLIES AND SERVICES THAT ARE AVAILABLE FROM MARYLAND**
24 **CORRECTIONAL ENTERPRISES;**

25 ~~[(3)]~~ (4) establish procedures to govern procurement of supplies and
26 services from community service providers and individual with disability owned
27 businesses;

28 ~~[(4)]~~ (5) from the State procurement list, choose appropriate supplies and
29 services for community service providers and individual with disability owned businesses
30 to offer for procurement;

31 ~~[(5)]~~ (6) provide that the State procure those supplies and services from
32 a community service provider or an individual with disability owned business;

33 ~~[(6)]~~ (7) if supplies or services are not available for procurement from a

unit of the State government, determine whether supplies or services are available from a community service provider or an individual with disability owned business;

~~[(7)] (8)~~ determine the fair market price of supplies and services that community service providers and individual with disability owned businesses provide;

~~[(8)] (9)~~ in accordance with market conditions, adjust prices for the supplies and services that community service providers and individual with disability owned businesses provide; and

~~[(9)] (10)~~ at the request of a community service provider or an individual with disability owned business, review and, if appropriate, change the price of a supply or service.

(g) In addition to the duties specified under subsection (f) of this section, the Committee shall:

(1) establish and periodically review eligibility policies or guidelines for participating community service providers and individual with disability owned businesses;

(2) maintain a current list of community service providers and individual with disability owned businesses;

(3) periodically review and revise its list of community service providers and individual with disability owned businesses; and

(4) send any revised list to the Secretary of General Services who shall make the list available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.

14–107.

The Pricing and Selection Committee for Blind Industries and Services of Maryland ~~[and],~~ the Employment Works Program, **AND MARYLAND CORRECTIONAL ENTERPRISES** shall:

(1) (i) maintain a current list of supplies and services that Blind Industries and Services of Maryland provides; and

(ii) maintain a current list of supplies and services that community service providers and individual with disability owned businesses provide;

(2) periodically review and revise the lists of supplies and services maintained in accordance with item (1) of this section; and

(3) send the lists, and any revised lists, to the Secretary of General Services

who shall make the lists available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.

17-502.

(a) **THIS SECTION DOES NOT APPLY TO EMERGENCY PROCUREMENTS UNDER § 13-108 OF THIS ARTICLE.**

(B) In addition to any other provision of law, the following persons shall use eMaryland Marketplace **ADVANTAGE** to publish notice of a procurement [or] **AND** publish a notice of award of a procurement that is at the same amount or exceeds the amount required by the Board for a State contract to be published in eMaryland Marketplace **ADVANTAGE**:

(1) a unit of State government;

(2) a county;

(3) a municipality;

(4) a bicounty or multicounty governmental agency;

(5) a special tax district, sanitary district, drainage district, soil conservation district, and water supply district;

(6) a public institution of higher education;

(7) a public school; and

(8) except for the Maryland Health and Higher Educational Facilities Authority, an entity exempt from the provisions of this Division II in accordance with § 11-203 of this article.

~~[(b)]~~ (C) This section may not be construed to prohibit a person listed in subsection ~~[(a)]~~ (B) of this section from publishing notice of a procurement or publishing a notice of award in accordance with any other law or policy.

~~[(c)]~~ (D) An unintentional violation of this section may not constitute grounds to challenge or appeal:

(1) the award of a procurement; or

(2) the process through which a procurement was conducted.

SECTION 2. AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the

1 Department of Legislative Services, shall correct, with no further action required by the
2 General Assembly, cross-references and terminology rendered incorrect by this Act. The
3 publisher shall adequately describe any correction that is made in an editor's note following
4 the section affected.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2020.