## **HOUSE BILL 649**

P2 0lr0004

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2020

CHAPTER \_\_\_\_\_

1 AN ACT concerning

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## State Finance and Procurement – Procedures <u>and Pricing and Selection</u> Committee for Preferred Providers

FOR the purpose of renaming the Pricing and Selection Committee for Blind Industries and Services of Maryland and the Employment Works Program to be the Pricing and Selection Committee for Preferred Providers; requiring Maryland Correctional Enterprises the Pricing and Selection Committee to determine the prevailing average market price of certain supplies and services that are available from Maryland Correctional Enterprises; requiring the Pricing and Selection Committee for Blind Industries and Services of Maryland, the Employment Works Program, and Maryland Correctional Enterprises to review and verify the prevailing average market prices of certain supplies and services; altering the duties of the Department of Information Technology relating to procurement; altering the persons who may be designated by certain members of the Procurement Improvement Council to attend a certain meeting; altering the list of units that are defined as "designated procurement units"; renaming eMaryland Marketplace to be eMaryland Marketplace Advantage; altering the procedures used by certain units when procuring certain supplies and services; altering the name and duties of a certain duties of the Pricing and Selection Committee; establishing that the Employment Works Program and an Employment Works Program vendor are not subject to certain cost savings requirements; altering the membership of the Pricing and Selection Committee; requiring the Pricing and Selection Committee to maintain a certain list of supplies and services; requiring the Pricing and Selection Committee to send certain lists to the Chief Procurement Officer, rather than the Secretary of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

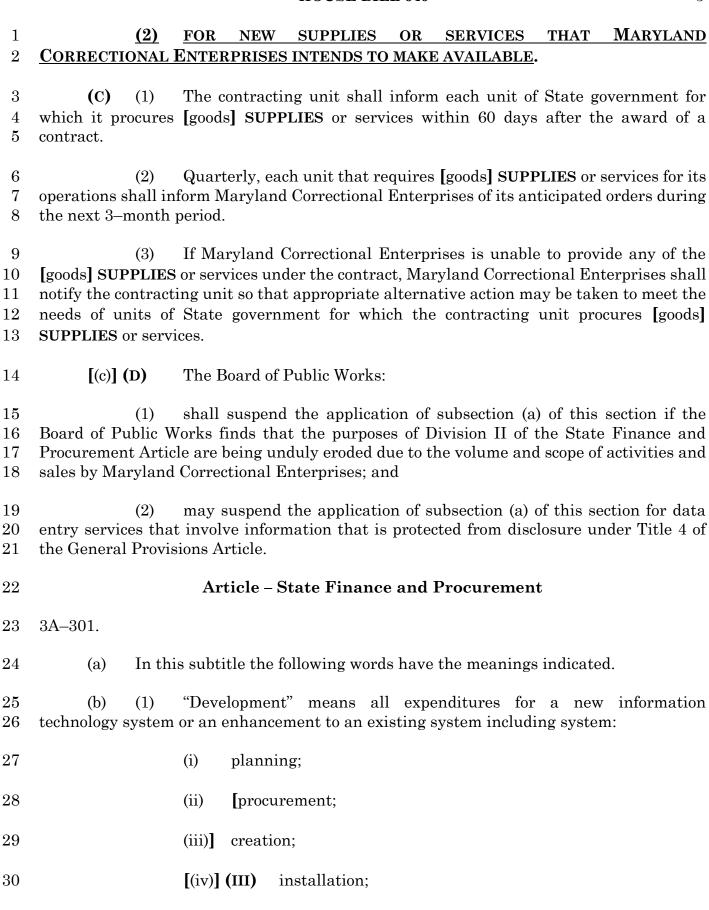


[	General Services; providing that certain provisions relating to the use of eMaryland
2	Marketplace Advantage do not apply to certain emergency procurements; altering
3	certain definitions; making certain stylistic changes; requiring the publisher of the
1	Annotated Code of Maryland, in consultation with and subject to the approval of the
5	Department of Legislative Services, to correct any cross-references or terminology
3	rendered incorrect by this Act and to describe any corrections made in an editor's
7	note following the section affected; and generally relating to State procurement.

- 8 BY repealing and reenacting, with amendments,
- 9 Article Correctional Services
- 10 Section 3–515
- 11 Annotated Code of Maryland
- 12 (2017 Replacement Volume and 2019 Supplement)
- 13 BY repealing and reenacting, with amendments,
- 14 Article State Finance and Procurement
- Section 3A-301, 3A-401, 12-105, 13-101, 13-111, 14-102, 14-106, 14-107, and
- 16 17–502
- 17 Annotated Code of Maryland
- 18 (2015 Replacement Volume and 2019 Supplement)
- 19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 20 That the Laws of Maryland read as follows:

## 21 Article - Correctional Services

- 22 3–515.
- 23 (a) A unit of State government shall purchase from Maryland Correctional
- 24 Enterprises any [goods] SUPPLIES or services that are available from Maryland
- 25 Correctional Enterprises and that Maryland Correctional Enterprises can provide at a price
- 26 not exceeding the prevailing average market price as determined by the [Department of
- 27 General Services MARYLAND CORRECTIONAL ENTERPRISES PRICING AND
- 28 SELECTION COMMITTEE FOR PREFERRED PROVIDERS.
- 29 (b) The Pricing and Selection Committee for Blind Industries
- 30 AND SERVICES OF MARYLAND, THE EMPLOYMENT WORKS PROGRAM, AND
- 31 MARYLAND CORRECTIONAL ENTERPRISES PREFERRED PROVIDERS SHALL
- 32 REVIEW AND VERIFY THE PREVAILING AVERAGE MARKET PRICES, AS DETERMINED
- 33 PROPOSED BY MARYLAND CORRECTIONAL ENTERPRISES, OF NEW AND:
- 34 (1) WHEN CHANGES ARE MADE TO THE PRICING OF EXISTING
- 35 SUPPLIES AND SERVICES THAT ARE AVAILABLE FROM MARYLAND CORRECTIONAL
- 36 ENTERPRISES; AND



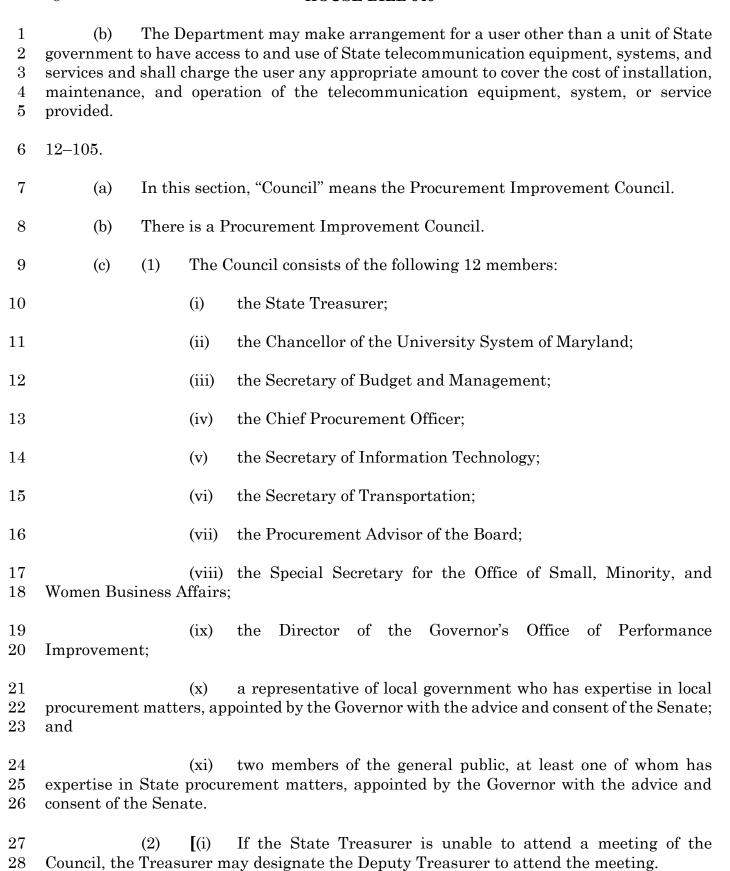
[(v)] (IV)

testing; and

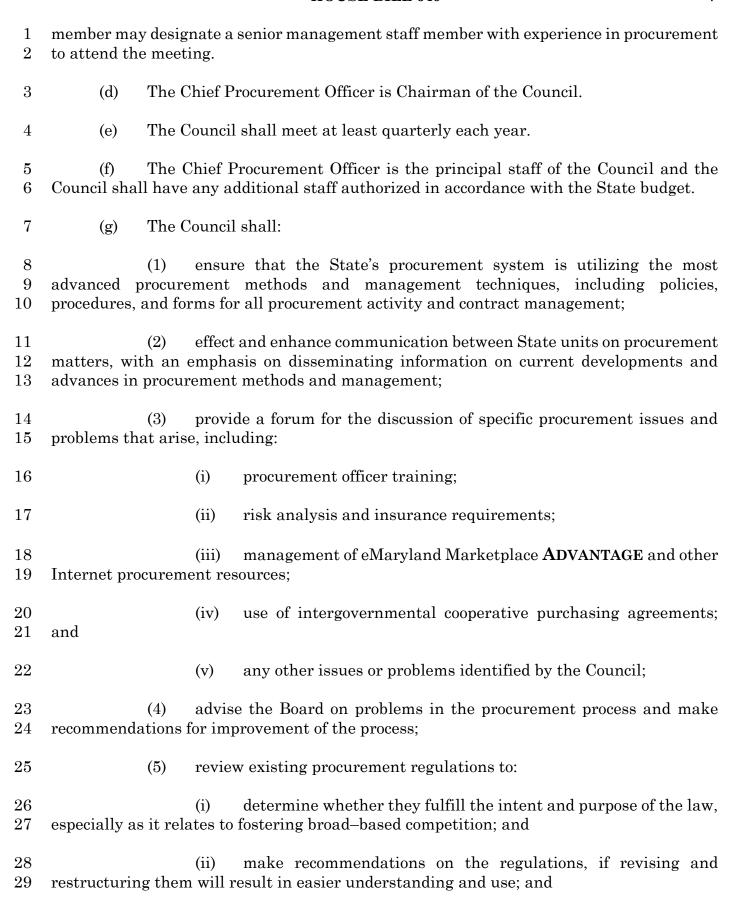
1	[(vi)] (V) initial training.
2	(2) "Development" does not include:
3 4 5	(i) ongoing operating costs, software or hardware maintenance routine upgrades, or modifications that merely allow for a continuation of the existing leve of functionality; or
6 7 8	(ii) expenditures made after a new or enhanced system has been legally accepted by the user and is being used for the business process for which it was intended.
9	(c) "Fund" means the Major Information Technology Development Project Fund
10 11	(d) "Information technology" means all electronic information processing [hardware and software], including:
12	(1) maintenance;
13	(2) telecommunications; [and]
14	(3) HARDWARE;
15	(4) SOFTWARE; AND
16	[(3)] (5) associated [consulting] services.
17 18	(e) "Information technology services" means information provided by electronic means by or on behalf of a unit of State government.
19 20	(f) "Major information technology development project" means any information technology development project that meets one or more of the following criteria:
21	(1) the estimated total cost of development equals or exceeds \$1,000,000;
22 23 24	(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
25 26	(3) the Secretary determines that the project requires the special attention and consideration given to a major information technology development project due to:
27	(i) the significance of the project's potential benefits or risks;
28	(ii) the impact of the project on the public or local governments;

1	(iii) the public visibility of the project; or
2	(iv) other reasons as determined by the Secretary.
3	(g) "Master plan" means the statewide information technology master plan.
4 5 6 7	(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.
8 9 10	(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.
11 12 13 14	(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.
15	3A-401.
16	(a) The Department shall:
17 18	(1) coordinate the development, [procurement,] management, and operation of telecommunication equipment, systems, and services by State government;
19 20 21 22	(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;
23 24 25	(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;
26 27 28	(4) coordinate State government telecommunication systems and services by reviewing requests by units of State government for telecommunication equipment, systems, or services;
29 30	(5) advise units of State government about planning, acquisition, and operation of telecommunication equipment, systems, or services; and

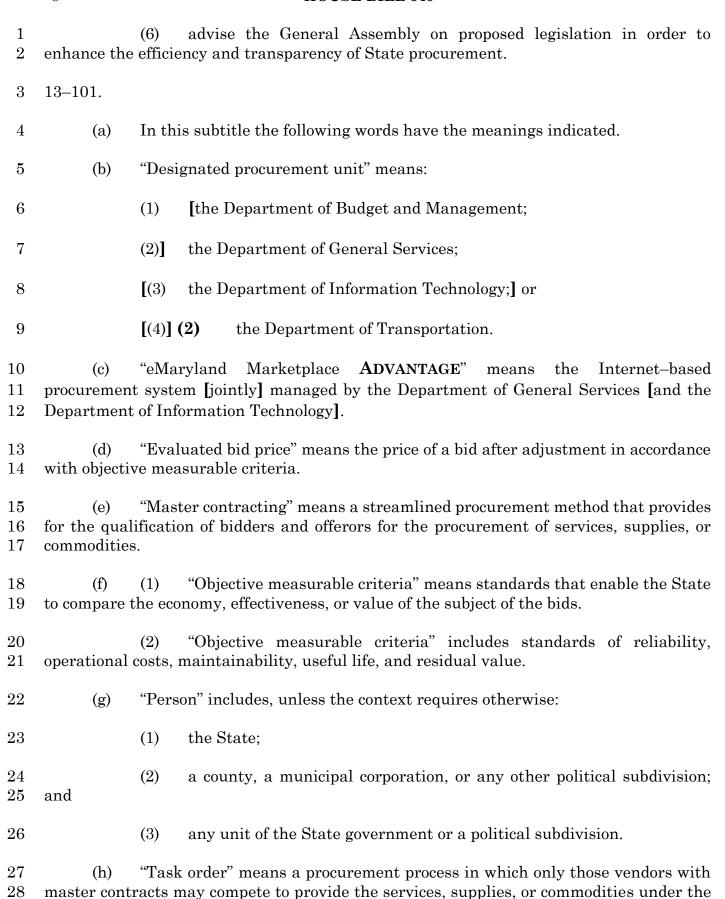
31 (6) provide radio frequency coordination for State and local governments 32 in accordance with regulations of the Federal Communications Commission.



29 (ii)] If a member of the Council listed in paragraph [(1)(ii)] (1)(I) 30 through [(ix)] (X) of this subsection is unable to attend a meeting of the Council, the

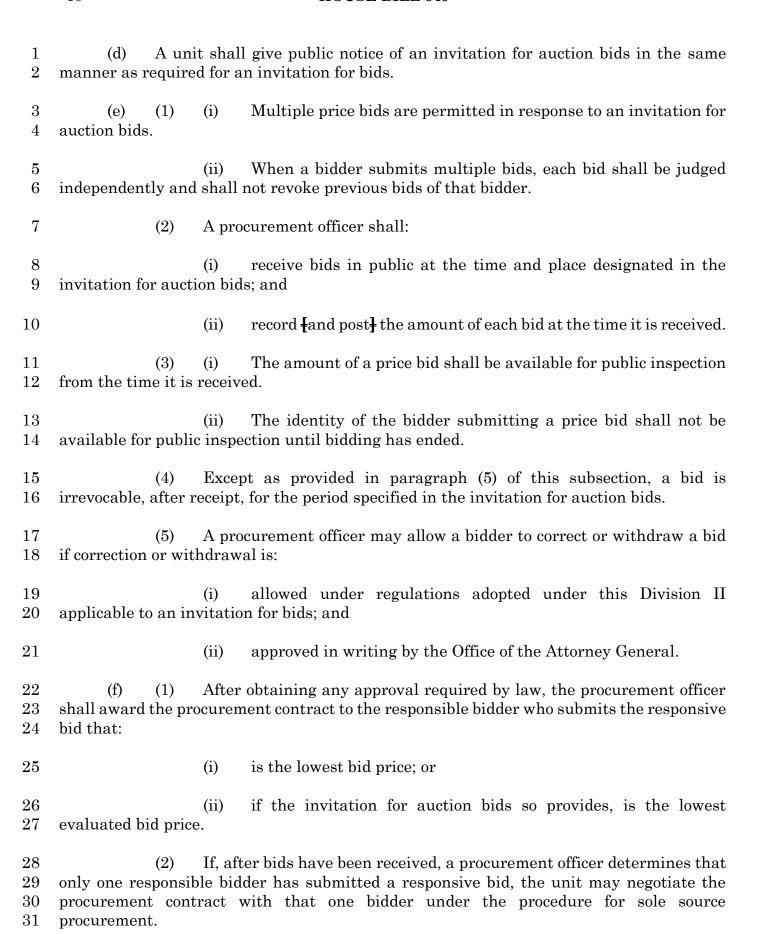


procurement.



1 13–111.

- 2 (a) This section applies to the procurement of supplies[, with an estimated 3 contract value of \$1,000,000 or more,] AND SERVICES by a [primary] DESIGNATED 4 procurement unit.
- 5 (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.
- 9 (2) Subject to subsection (c) of this section, an invitation for auction bids 10 shall include:
- 11 (i) the specifications of the procurement contract;
- 12 (ii) whether the procurement contract will be awarded based on the lowest bid price or the lowest evaluated bid price;
- 14 (iii) if the procurement contract will be based on evaluated bid price, 15 the objective measurable criteria by which the lowest evaluated bid price will be 16 determined;
- 17 (iv) the small business preference, if designated under  $\S$  13–103 of 18 this subtitle; and
- 19 (v) the date and time when bidding will commence and the date and 20 time when bidding will end or the event upon which bidding will end.
- 21 (c) (1) In the discretion of the procurement officer, the invitation for auction 22 bids may:
- 23 (i) include a request for unpriced technical offers or samples;
- 24 (ii) direct bidders to submit price bids after the unit evaluates the 25 technical offers or samples and finds they are acceptable under the criteria set forth in the 26 invitation for auction bids; and
- 27 (iii) inform all bidders who submitted technical offers or samples of 28 the identity of each bidder who submitted an acceptable technical offer or sample.
- 29 (2) Price bids may not be received until after the unit has completed 30 evaluation of the technical offers or samples.
- 31 (3) A price bid may not be received at any time if the bid is submitted by a 32 bidder whose technical offer or sample has been evaluated as unacceptable to the unit.



$\frac{1}{2}$	(3) (i) After bids have been received, a procurement officer may award a procurement contract on the basis of revised bids if:
3	1. all bids are rejected under § 13–206(b) of this title;
4 5	2. all bid prices exceed the funds available for the procurement; or
6 7 8 9 10	3. with the approval of the head of a [primary] <b>DESIGNATED</b> procurement unit or a designee, the procurement officer determines that all bids are unreasonable as to at least one requirement and the delay that would result from issuing a new invitation for auction bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the State.
11 12 13 14	(ii) If there is more than one bidder, discussions about revised specifications or quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions.
15 16	(iii) If one of the conditions set forth under subparagraph (i) of this paragraph exists, as promptly as possible, the procurement officer shall:
17 18	1. issue an invitation for revised auction bids, which shall state whether the award will be made without competitive negotiations; and
19	2. require a prompt response to that invitation.
20 21	(iv) An invitation for revised auction bids is not subject to the notice requirements in subsection (d) of this section.
22 23 24	(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.
25 26 27	(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:
28	1. is the lowest bid price; or
29 30	2. if the invitation for revised bids so provides, is the lowest evaluated bid price.

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

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Marketplace ADVANTAGE.

Committee.

1	<u>14–102.</u>	
2 3 4	(a) or controlled subtitle.	Notwithstanding any other provision of this Division II, a State or State aided entity shall buy supplies and services in accordance with § 14–103 of this
5 6 7		The procurement of services from [a sheltered workshop] THE EMPLOYMENT OGRAM OR AN EMPLOYMENT WORKS PROGRAM VENDOR is not subject to ngs requirements of § 13–405 of the State Personnel and Pensions Article.
8	14–106.	
9 10 11		In this section, "Committee" means the Pricing and Selection Committee for tries and Services of Maryland [and], the Employment Works Program, AND CORRECTIONAL ENTERPRISES. PREFERRED PROVIDERS.
12 13	<del>-</del>	There is a Pricing and Selection Committee for Blind Industries and Services [and], the Employment Works Program, AND MARYLAND CORRECTIONAL SES PREFERRED PROVIDERS.
5	(c)	The Committee consists of the following <b>§ 6</b> members:
16	, ,	(1) the Secretary of Transportation or a designee;
17		(2) the Secretary of General Services or a designee;
18		(3) the Secretary of Public Safety and Correctional Services or a designee;
19 20	Department	(4) the Assistant Secretary for Vocational Rehabilitation within the State of Education or a designee; <del>and</del>
21		(5) the Secretary of Labor or a designee: AND
22 23	ENTERPRIS	(6) THE CHIEF EXECUTIVE OFFICER OF MARYLAND CORRECTIONAL SES OR A DESIGNEE.
24	(d)	A member of the Committee:
25		(1) may not receive compensation; but
26 27	Travel Regu	(2) is entitled to reimbursement for expenses under the Standard State lations as provided in the State budget.
28	(e)	(1) Blind Industries and Services of Maryland shall provide staff for the

$\frac{1}{2}$	(2) The staff provided in accordance with paragraph (1) of this subsection shall:
3 4	(i) be a blind or a visually impaired associate of Blind Industries and Services of Maryland; and
5 6 7	(ii) complete work related to the duties of the Committee regarding Blind Industries and Services of Maryland under the supervision and direction of the Committee.
8	(f) The Committee shall:
9 10 11 12 13	(1) ensure that supplies and services provided by Blind Industries and Services of Maryland or *\(\text{AN EMPLOYMENT WORKS PROGRAM}\) community service provider create work opportunities for individuals who have a mental or physical disability, including blindness, for which Blind Industries and Services of Maryland or the \(\text{EMPLOYMENT WORKS PROGRAM}\) community service provider was established to assist;
14 15	(2) set the prices of supplies and services that Blind Industries and Services of Maryland provides to reflect the fair market prices for the supplies and services;
16 17 18 19	(3) REVIEW AND VERIFY THE PREVAILING AVERAGE MARKET PRICES, AS DETERMINED PROPOSED BY MARYLAND CORRECTIONAL ENTERPRISES, OF NEW AND EXISTING SUPPLIES AND SERVICES THAT ARE AVAILABLE FROM MARYLAND CORRECTIONAL ENTERPRISES;
20 21 22	[(3)] <b>(4)</b> establish procedures to govern procurement of supplies and, services, AND OTHER SALES from EMPLOYMENT WORKS PROGRAM community service providers and individual with disability owned businesses;
23 24 25	[(4)] (5) from the State procurement list, choose appropriate supplies and, services, AND OTHER SALES for EMPLOYMENT WORKS PROGRAM community service providers and individual with disability owned businesses to offer for procurement;
26 27 28	[(5)] (6) provide that the State procure those supplies and services, SERVICES, AND OTHER SALES from a AN EMPLOYMENT WORKS PROGRAM community service provider or an individual with disability owned business;
29 30	[(6)] (7) if supplies or services, SERVICES, OR OTHER SALES are not available for procurement from a unit of the State government, determine whether supplies

 $\underline{\text{or services}}, \underline{\text{SERVICES}}, \underline{\text{OR OTHER SALES}}$  are available from  $\underline{\text{a}}$   $\underline{\text{AN EMPLOYMENT WORKS}}$ 

**PROGRAM** community service provider or an individual with disability owned business;

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businesses provide; AND

- 1 [(7)] **(8)** determine the fair market price of supplies and services, 2 SERVICES, AND OTHER SALES that EMPLOYMENT WORKS PROGRAM community service providers and individual with disability owned businesses provide; 3 4 in accordance with market conditions, adjust prices for the [(8)] **(9)** 5 supplies and services, SERVICES, AND OTHER SALES that EMPLOYMENT WORKS **PROGRAM** community service providers and individual with disability owned businesses 6 7 provide; and 8 **[(9)] (10)** at the request of a community service provider or an individual 9 with disability owned business, review and, if appropriate, change the price of a supply or service. 10 11 In addition to the duties specified under subsection (f) of this section, the (g) 12 Committee shall: 13 (1) establish and periodically review eligibility policies or guidelines for participating community service providers and individual with disability owned 14 15 businesses: 16 (2)maintain a current list of community service providers and individual 17 with disability owned businesses; 18 periodically review and revise its list of community service providers 19 and individual with disability owned businesses; and 20 send any revised list to the Secretary of General Services CHIEF 21PROCUREMENT OFFICER who shall make the list available to each person responsible 22for buying supplies or services for the State or a State aided or controlled entity. 23 14 - 107.24The Pricing and Selection Committee for Blind Industries and Services of Maryland fand, the Employment Works Program, AND MARYLAND CORRECTIONAL 25**ENTERPRISES PREFERRED PROVIDERS** shall: 26 maintain a current list of supplies and services that Blind 27(1) Industries and Services of Maryland provides; and 28 29maintain a current list of supplies and services, SERVICES, AND (ii)
- 32 <u>(III) MAINTAIN A CURRENT LIST OF SUPPLIES AND SERVICES</u>
  33 <u>THAT MARYLAND CORRECTIONAL ENTERPRISES PROVIDES;</u>

OTHER SALES that community service providers and individual with disability owned

- 1 **(2)** periodically review and revise the lists of supplies and services, 2 SERVICES, AND OTHER SALES maintained in accordance with item (1) of this section; and 3 (3)send the lists, and any revised lists, to the Secretary of General Services 4 CHIEF PROCUREMENT OFFICER who shall make the lists available to each person responsible for buying supplies or services, SERVICES, OR OTHER SALES for the State or 5 6 a State aided or controlled entity. 7 17-502.8 THIS SECTION DOES NOT APPLY TO EMERGENCY PROCUREMENTS (a) 9 UNDER § 13–108 OF THIS ARTICLE. 10 (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 11 12 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 13 **ADVANTAGE**: 14 a unit of State government; 15 (1) 16 (2) a county; 17 a municipality; (3) 18 **(4)** a bicounty or multicounty governmental agency; 19 a special tax district, sanitary district, drainage district, soil (5)conservation district, and water supply district; 20 21 a public institution of higher education; (6) 22(7)a public school; and 23 except for the Maryland Health and Higher Educational Facilities 24Authority, an entity exempt from the provisions of this Division II in accordance with § 11–203 of this article. 2526 [(b)] **(C)** This section may not be construed to prohibit a person listed in
- [(c)] (D) An unintentional violation of this section may not constitute grounds to challenge or appeal:

notice of award in accordance with any other law or policy.

subsection [(a)] (B) of this section from publishing notice of a procurement or publishing a

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## **HOUSE BILL 649**

(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 Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross—references and terminology rendered incorrect by this Act. The publisher shall adequately describe any correction that is made in an editor's note following the section affected.
SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.
Approved:
Governor.
Speaker of the House of Delegates.
President of the Senate.