

Chapter 24 PROCUREMENT AND DISPOSITION*

***Cross reference(s)**—Public Ethics, Ch. 2; Personnel Code, Ch. 3; Municipal Infractions, Ch. 5; Penalties, Fees And Fines, Ch. 6.

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ARTICLE I. IN GENERAL

Sec. 24-1. Purpose.

The purpose of this article is to:

- (1) Provide for fair and equitable treatment of all persons involved in public purchasing by the Village;
- (2) Ensure the maximum purchasing value of public funds in procurement; and
- (3) Provide safeguards for maintaining a procurement and disposition system of quality and integrity.

(No. 0-91-03, 9-10-91)

Sec. 24-2. Scope.

This Chapter applies to every disposition for value or expenditure of public funds for public purchasing by the Village irrespective of its source. When the procurement or disposition involves federal or state assistance, grants or contract funds or is subject to federal or state regulations or grant or contract requirements, the procurement or disposition shall be conducted in accordance with any applicable mandatory federal or state law and regulation or grant or contract requirement not reflected in this Chapter. Nothing in this Chapter shall be construed as prohibiting or limiting the Village's right to employ its own personnel for the construction or reconstruction of public improvements or for any other purpose without advertising for or receiving bids or proposals.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-3. Administration.

(a) *Approval.* All contracts involving more than ten thousand dollars (\$10,000.00) single expenditure shall be approved by the Board of Managers, except emergency procurements. Any procurement involving a single expenditure of not more than ten thousand dollars (\$10,000.00) shall be approved by the Village Manager.

(b) *Contract execution.* The Village Manager may designate such officials of the Village government to execute contracts as the Manager may deem appropriate, subject to any requirements of this article requiring the approval of the Board of Managers in certain circumstances.

(No. 0-91-03, 9-10-91; Ord. of 10-19-93; No. 12-04-05, 12-12-05; No. 04-01-17, 05-08-17)

Sec. 24-4. Definitions.

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bid means an offer, in writing, to furnish goods or services in conformity with the specifications, delivery terms and conditions or other requirements included in the invitation for bids or to purchase goods from the Village pursuant to Division 4 of article II of this Chapter.

Brand name or equivalent specification means a specification limited to one (1) or more items by manufacturer's name or catalogue number. An equivalent specification is one which uses manufacturer's name or catalogue number to describe the standard of quality, performance, and other salient characteristics needed to meet Village requirements, and which provides for the submission of an equivalent product.

Change order means a written order signed and issued by the Village directing a contractor to make changes which the contract authorizes the Village to order without the consent of the contractor.

Competitive sealed bid means a method of procurement in which a supply, service, or construction item is defined in a list of specifications; the specifications are included in an invitation for bids; the bids are received by a specified time in sealed envelopes; an award is made to the lowest responsible bidder meeting all specifications, and cost is objectively measurable as defined in the specifications.

Competitive sealed proposal means a method of procurement in which a supply, service, or construction item is defined in a list of specifications; proposals are received by a specified time in sealed envelopes; and an award is made to the proposer most closely meeting specifications as determined by an evaluation that uses a predetermined and published set of evaluation criteria. Cost is one (1) criterion among others, all of which may be assigned specific weights.

Construction means the erection; alteration or repair of any Village structure or building; or other public improvements of any kind. "Construction" does not include the routine operation, repair or maintenance of existing facilities.

Contract means any type of Village agreement, regardless of how it may be titled, for the procurement or disposition of goods, services or construction, including purchase orders.

Contract modification means any written alteration in specifications, delivery, period of performance, price, quantity, or other provision of an existing contract whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.

Contractor means any person having a contract with the Village.

Goods means supplies, materials, equipment and all tangible property, but not including real property.

Invitation for bids means all documents, whether attached or incorporated by reference, used for soliciting sealed bids.

Professional services means those services provided by persons whose services are customarily negotiated because of the individuality of those services and because they do not lend themselves to a fixed price bid.

Proposal means an offer to supply goods or perform services, or to purchase goods from the Village in response to a request for proposals.

Public notice means timely posting with *eMaryland Marketplace* or as otherwise required by State law, and publication when appropriate in a newspaper of general circulation or by electronic means.

Request for proposals means all documents, whether attached or incorporated by reference, used for soliciting proposals.

Requirements contract means a contract whereby the Village agrees to purchase and the contractor agrees to sell all the goods or services of a designated type, which the Village may require during a period of time without specifying in the contract an exact quantity.

Responsible bidder or offeror means a person who has the capability and reliability in all respects to perform fully the contract requirements. Any person who is in default on the payment of taxes, licenses or other monies due the Village shall not be deemed responsible.

Responsive bidder or offeror means a person who has submitted a bid, which conforms in all material respects to the invitation for bids.

Specification means any description of the design or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-5. Reserved.

ARTICLE II. SOURCE SELECTION AND CONTRACT FORMATION

DIVISION 1. GENERALLY.

Sec. 24-6. Voidable contract.

If any official of the Village purchases or contracts for any goods; services or construction in a manner contrary to the provisions of this article, such purchase or contract shall be voidable by the Village. If the Village voids the contract and, in the opinion of the Board of Managers, the contracting violation occurred through no fault of the contractor, the contractor may be reimbursed on a quantum merit basis for goods or services furnished or for work performed in good faith.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-7. Purchase by contract.

For the routine purchase of goods and services, a purchase order shall satisfy the requirement for the contract. A formal written contract issued by the Village and signed by both parties shall be required for procurement involving any single expenditure of more than ten thousand dollars (\$10,000.00) in a fiscal year.

(No. 0-91-03, 9-10-91; Ord. Of 10-19-93; No. 12-04-05, 12-12-05; No. 04-01-17, 05-08-17)

Sec. 24-8. Contract modification, change or adjustment.

Every contract modification, change order, or price adjustment under a contract with the Village which exceeds five thousand dollars (\$5,000.00) and which modification, change or adjustment is in excess of ten (10) percent of the original contract price shall be subject to prior approval by the Board of Managers after receiving a report from the Village Manager.

(No. 0-91-03, 9-10-91; Ord. of 10-19-93; No. 12-04-05, 12-12-05; No. 04-01-17, 05-08-17)

Sec. 24-9. Village procurement records.

All records pertaining to any solicitation, award, or performance of a contract shall be maintained by the Village in accordance with the Village's Records Retention Schedule.

(No.0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-10. Right to reject bids, proposals and offers.

Whenever one (1) or more bids, proposals or offers are submitted under the provisions of this article, the awarding authority, whether it be the Board of Managers or the Village Manager, shall have the right to reject any and all such bids, proposals, or offers.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-11. Competitive procurement required.

No contract in which any officer or employee of the Village is financially interested or through which the officer or employee stands to profit financially shall be awarded without competitive procurement. Any contract in violation of the provisions of this subsection shall be voidable by the Village. For the purpose of this subsection, a person who owns less than five (5) percent of the stock of any publicly-held corporation listed on a National Stock Exchange shall not be deemed to be financially interested.

(No. 04-01-17, 05-08-17)

Sec. 24-12. Reserved.

DIVISION 2. COMPETITIVE BIDDING AND PROPOSAL

Sec. 24-13. Competitive sealed bidding.

(a) *Invitation for bids.* An invitation for bids shall be in writing and shall include specifications, and all contractual terms and conditions applicable to the procurement. Public notice of the invitation shall be given at least fifteen (15) days prior to the opening of the bids. Competitive sealed bidding shall be the preferred method for Village procurement which is expected to exceed fifteen thousand dollars (\$15,000.00).

(b) *Cancellation.* The Village Manager may cancel any invitation for bids.

(c) *Bid opening.* Bids shall be opened and recorded publicly as outlined in the invitation for bids, in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids.

(d) *Bid acceptance and evaluation.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this article, and shall be evaluated based on the requirements and criteria set forth in the invitation for bids.

(e) *Bid correction.* Mistakes discovered after bid opening resulting in downward correction of a bid, which would displace the apparent low bidder, shall only be permitted if the error made and the intended bid price can be determined by the Village solely from the bid documents. Upward correction of a bid, established from the bid documents, shall be permitted only if the Village finds that the mistake was inadvertent and bona fide and that it would be unconscionable to require the bidder to enter into a contract at the bid price. All decisions to permit the correction of bids based upon bid mistakes shall be supported by a written determination made by the Village Manager.

(f) *Award.* Award shall be made to the responsible bidder whose proposal is determined in writing to be the most advantageous to the Village taking into consideration price and the evaluation factors set forth in the request for bids. The contract file shall contain the basis on which the award is made.

(No. 0-91-03, 9-10-91; Ord. of 10-19-93; No. 12-04-05, 12-12-05; No. 04-03-06, 04-03-06)

Sec. 24-14. Competitive sealed proposal.

(a) *When appropriate to use.* A contract may be entered into by the use of the competitive sealed proposal method when the use of competitive sealed bidding is either not practical or not advantageous to the Village or when the procurement is for professional services. Proposals shall be solicited through a request for proposals by public notice. Such public notice shall be given at least fifteen (15) days prior to the opening of the proposals. Competitive sealed proposals shall be the preferred method for Village procurement which is expected to exceed fifteen thousand dollars (\$15,000.00).

(b) *Bid regulations applicable to proposals.* Subsections (b), (c), (d) and (e) of section 24-13 relating to competitive sealed bids shall also be applicable to competitive sealed proposals.

(c) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals; discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposal and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions there shall be not discussion of the identity of competing offerors.

(d) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Village taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-15. Override of bid and proposal requirements.

Any requirement for competitive bidding or proposals imposed by this Chapter may be overridden for good cause by a vote of five members of the Board of Managers.

(No.10-03-14, 10-13-14.)

DIVISION 3. PROCUREMENT EXEMPT FROM COMPETITIVE BIDDING AND PROPOSAL

Sec. 24-16. Open market procurement.

(a) *Dollar limit.* Any purchase or sale not exceeding fifteen thousand dollars (\$15,000.00) may be made after receiving, insofar as it is practical, at least three (3) quotations or offers.

(b) *Award.* The award shall be made to the lowest responsible and qualified supplier or the highest responsible and qualified purchaser. The name of the person or business submitting a quotation or offer to purchase and the date and amount of each quotation or offer to purchase shall be recorded and maintained as a public record.

(No. 0-91-03, 9-10-91; Ord. of 10-19-93; No. 12-04-05, 12-12-05; No. 04-03-06, 04-03-06;No. 10-03-14; 10-27-14; No. 04-01-17, 05-08-17)

Sec. 24-17. Other government competitive bid contracts.

(a) *Purchase at bid price.* Whenever a federal, state or local government, or any agency or unit thereof, whose purchasing policies are comparable to those of the Village, has conducted a bid and awarded a contract, the Village Manager may purchase the bid item at the bid price from the successful bidder, subject, where required, to the approval of the Board of Managers. Whenever the Village

Manager elects to purchase an item, service or material from a successful bidder of another jurisdiction as provided for in this section, the Village Manager shall obtain a copy of the jurisdiction's purchasing policies. Further, the Village Manager shall enter into a contract with the successful bidder setting out the terms and conditions of the purchase.

(b) *Not required.* Nothing in this section shall be deemed to require the Village Manager to use another jurisdiction's bid process when purchasing items, services and materials. The Village Manager retains the right to issue a request for proposals or bids for all items, services and materials purchased by the Village.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-18. Sole source procurement.

A contract may be awarded without competition when the Village Manager determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply, service or construction item. The Village Manager shall conduct negotiations as appropriate, as to price, delivery, and terms and keep a written record of all sole source procurement.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-19. Emergency procurement.

Notwithstanding any other provision of this article, the Village Manager may make or authorize others to make emergency procurement of supplies, services or construction items when there exists a threat to public health, welfare or safety, and delay would seriously injure the Village financially or otherwise. A written statement of the nature of the emergency shall be made by the Village Manager who shall promptly notify the Chair or Vice Chair of the circumstances requiring the emergency procurement. Such emergency procurement shall be made with such competition as is practical under the circumstances, but need not satisfy the requirements of Division 2 of this article or the other sections of this division.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-20. Cooperative and wholesale procurement.

(a) *Cooperative purchasing.* Notwithstanding any other provision of this article, the Village Manager may contract with any supplier who offers goods or services on the same terms as provided other state or local governments or agencies thereof if the Village Manager finds that the cost of the items to be purchased is equal to or less than that which could be obtained by competitive procurement.

(b) *Interjurisdictional purchasing.* The Village Manager may also contract directly with state or local governments or agencies thereof for goods or services when such goods, work or services were obtained through competitive procurement procedures or service to be performed is now being performed by the state or local jurisdiction.

(c) *Joint purchasing.* The Village Manager may join with other units of government in cooperative purchasing plans when the best interests of the Village would be served thereby.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-21. Employee Benefits.

Subject to Section 24-3 of this Chapter, a contract for employee benefits, including but not limited to health, dental, disability, life insurance and workers' compensation, may be awarded through a qualified insurance broker process without a competitive bid.

(No. 07-01-13, 07-08-13; No. 04-01-17, 05-08-17)

Sec. 24-22. Professional services.

Professional services may be procured through negotiation with selected individuals or entities. At the direction of the Board of Managers, the Village Manager may conduct discussions with eligible persons and entities regarding the contract and shall select from among them three (3) persons deemed most qualified to provide the required services. The negotiations shall then be conducted by the Village Manager based on criteria established and made public by the Village. Should the Village be unable to negotiate an acceptable contract with any of the three (3) selected persons, additional persons may be selected in order of their competence and qualifications. Notwithstanding the foregoing, the Board of Managers may select individuals or firms to provide continuing professional services by whatever procedure the Board deems appropriate and in the best interest of the Village.

(No.0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-23—24-25. Reserved.

DIVISION 4. DISPOSITION OF GOODS

Sec. 24-26. Methods of disposal.

Except as otherwise required in this Article, goods which have been found by the Village Manager to have become surplus, obsolete or unusable, and whose current estimated value is one thousand dollars (\$1,000.00) or less may be donated, discarded or disposed of as appropriate. All goods which have become surplus, obsolete or unusable and whose current estimated value exceeds one thousand dollars (\$1,000.00) shall be disposed of by one (1) of the following methods:

- (1) Competitive sealed bid.
- (2) Competitive sealed proposal.
- (3) Competitive auction sale.
- (4) Trade-in or exchange for goods or services which are currently needed.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-27. Disposal of Police Department firearms.

Firearms which have been determined by the Chief of Police to be surplus may be purchased by current sworn police officers of the Chevy Chase Village Police Department or will be destroyed. Any police officer purchasing a firearm from the department shall sign an agreement acceptable to the Village:

(a) to hold harmless the Village, its employees and officials, from claims related to the purchase or use, and assume the risk of use, of the firearm; and

(b) that prohibits sale or transfer of the firearm to any other person, and requires the officer to resell the firearm to the Village, or to destroy the firearm, when the officer no longer wishes to continue ownership.

(No. 10-01-16, 10-10-16)

Sec. 24-28—24-30. Reserved.

ARTICLE III. CONTRACT REQUIREMENTS

DIVISION 1. GENERALLY

Sec. 24-31. Reserved.

DIVISION 2. SPECIFICATIONS

Sec. 24-32. Interpretation.

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage maximum free and open competition in satisfying the Village's minimum needs, and shall not be unduly restrictive. This section applies to all specifications including, but not limited to, those prepared for the Village by architects, engineers, designers, and drafters.

(No. 0-91-03, 9-10-91)

Sec. 24-33—Sec. 24-35. Reserved.

DIVISION 3. BONDS AND BID SECURITY

Sec. 24-36. Bid security.

(a) *Requirement of bid security.* Bid security in an amount that the Village Manager deems appropriate, shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash or other security satisfactory to the Village. The Village Manager may waive the requirement for bid security for construction contracts when appropriate.

(b) *Withdrawal of bid.* If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-37. Contract performance and payment bonds.

When a construction contract is awarded, the following bonds or security shall be delivered to the Village and shall become binding on the parties upon the execution of the contract:

(a) A performance bond satisfactory to the Village, executed by a surety company authorized to do business in this State, or the equivalent in cash or other security satisfactory to the Village, and in an amount equal to one hundred (100) percent of the price specified in the contract; and

(b) A payment bond satisfactory to the Village, executed by a surety company authorized to do business in this State, or the equivalent in cash or other security satisfactory to the Village, for the protection of all persons supplying labor and materials, including lessors of equipment to the extent of the fair rental value thereof and to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to fifty (50) percent of the price specified in the contract. Any contractor, prior to receiving a progress or final payment under a contract covered hereunder, shall certify in writing that such contractor has made payment from the proceeds of prior payments and that such contractor will make timely payments from the proceeds of the progress or

final payment then due such contractor, to such contractor's subcontractors and supplies in accordance with such contractor's contractual arrangements with them.

(No.0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-38. Additional bonds.

Nothing in this article shall be construed to limit the authority of the Village to require any additional bonds or other security in addition to, or in cases other than, those specified in Sec. 24-37.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-39. Reserved.

DIVISION 4. CLAIM RESOLUTION AND APPEALS

Sec. 24-40. Bid protest.

(a) *Submission of protest.* Any bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract must first seek resolution of such complaint by submitting a protest to the Village Manager. If this effort fails to resolve the complaint, the aggrieved party may protest to the Board of Managers in writing. A protest with respect to an invitation for bids or request for proposals shall be submitted prior to the opening of bids or the proposals, unless the protestor did not know and did not have reason to know of the facts giving rise to the protest until after such date, in which case the protest must be submitted within ten (10) calendar days after the facts became known, but in no event after the execution of a binding contract with the successful bidder.

(b) *Suspension of procurement.* In the event of a timely protest under subsection (a) of this section, procurement shall not proceed further until the dispute is resolved or until the Village Manager makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Village.

(No. 0-91-03, 9-10-91)

Sec. 24-41. Contract claim resolution.

(a) *Submission of claim.* Claims by a contractor against the Village relating to a contract, shall be submitted in writing to the Village Manager for a decision. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

(b) *Manager's decision.* The decision of the Village Manager shall be promptly issued in writing and mailed or otherwise furnished to the contractor. This decision shall state the reasons for the Manager's decision and inform the contractor of the contractor's right of appeal under subsection (c) of this section.

(c) *Appeal to Board of Managers.* The Village Manager's decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board of Managers.

(No. 0-91-03, 9-10-91; No. 04-01-17, 05-08-17)

Sec. 24-42. Reserved.

ARTICLE V. ETHICS IN CONTRACTING

Sec. 24-43. Collusive bidding.

(a) *Notification.* When collusion is suspected among any bidders or offerors, a written notice of such suspicion shall be transmitted to the Village Counsel.

(b) *Retention of documents.* All documents involved in any procurement in which collusion is suspected shall be retained, shall be made available to Village Counsel upon request, and shall not be destroyed without the approval of Village Counsel.

(c) *Amount of liability for damages.* A person who enters into a contract with the Village after engaging in collusion with another person for the purpose of defrauding the Village shall be liable for damages equal to three (3) times the value of the loss to the Village which is attributable to the collusion.

(No. 0-91-03, 9-10-91)

Sec. 24-44. Authority to suspend or debar contractors.

(a) *Suspension of contractors.* If after consulting with the Village Counsel, the Village Manager finds that there is probable cause to believe that a person has engaged in conduct which might lead to debarment, the Village Manager is authorized to suspend such person from consideration of award of contracts for a period not exceeding three (3) months.

(b) *Debarment of contractors.* After reasonable notice to the person involved and reasonable opportunity for such person to be heard, the Village Manager, with the advice of the Village Counsel, is authorized to debar a person from consideration for award of contract for a period not exceeding three (3) years for any of the causes set forth in subsection (c) below. Such debarment shall be made in writing and shall state specifically the causes for debarment.

(c) *Causes for debarment.*

- (1) Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person's responsibility as a Village contractor.
- (3) Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Violation of contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that such failure to perform or unsatisfactory performance which was caused by acts

beyond the control of the contractor shall not be considered to be a basis for debarment.

- (5) Any other cause determined to be so serious and compelling as to affect the person's responsibility, as a Village contractor, including debarment by another governmental entity for any cause listed in this chapter.
- (6) Violation of Chapter 2 (Public Ethics).
 - a. Public ethics regulations. The public ethics provisions of Chapter 2 shall be applicable to these procurement regulations.
 - b. Reserved.

(No. 0-91-03, 9-10-91)

Sec. 24-45—24-46. Reserved.

RESERVED

On December 12, 2005, the Chevy Chase Village Board of Managers, comprehensively amended the Village Code to uniformly apply initial capital format to all references to : Chevy Chase Village, Chevy Chase Village Board of Managers, Board of Managers, Board, Chevy Chase Village Code, Village Code, Village Manager, Montgomery County, Montgomery County Council, Montgomery County Code, County Code, Maryland, State of Maryland, Maryland State, Maryland General Assembly and Annotated Code of Maryland.

(No. 12-05-05, 12-12-05)

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