

SENATE BILL 719

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P2

2002 Regular Session
(2r1669)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Commerce and Government Matters --

Introduced by **Senators Hollinger, Stone, Collins, Frosh, and Harris**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 482

1 AN ACT concerning

2 **Procurement - Unsolicited Proposals**

3 FOR the purpose of authorizing a unit of State government to award a contract for
4 goods or services in response to an unsolicited proposal that meets certain
5 requirements; exempting certain unsolicited proposals from a certain
6 requirement that procurement be by competitive sealed bid; establishing an
7 interagency panel to review unsolicited proposals and to make certain
8 determinations subject to certain requirements and procedures; providing for the
9 effect of certain action or inaction by the interagency panel; establishing that a
10 qualifying unsolicited proposal is not required to be a sole source contract;
11 requiring a procurement officer to obtain certain approval before awarding a
12 contract in response to an unsolicited proposal; requiring a procurement officer
13 to protect the confidentiality of information contained in an unsolicited
14 proposal; limiting the term of a contract based on an unsolicited proposal;
15 limiting the annual State expenditures under a contract based on an unsolicited
16 proposal; requiring each contracting unit to publish notice of intent to award,
17 and notice of award of, an unsolicited proposal in certain publications; requiring

1 certain agencies to implement certain outreach programs; *providing for certain*
 2 *reconsideration by the interagency panel of approval of an unsolicited proposal;*
 3 providing that a certain prohibition against assisting in the drafting of
 4 specifications, an invitation for bids, or a request for proposals for a
 5 procurement does not include providing specifications for certain unsolicited
 6 proposal procurements; requiring the Department of Budget and Management
 7 to report annually on the impact of this Act to the Governor and certain
 8 committees of the General Assembly; defining certain terms; providing for the
 9 application of this Act; providing for the termination of this Act; and generally
 10 relating to unsolicited procurement proposals.

11 BY repealing and reenacting, with amendments,
 12 Article - State Finance and Procurement
 13 Section 13-102(a)
 14 Annotated Code of Maryland
 15 (2001 Replacement Volume)

16 BY adding to
 17 Article - State Finance and Procurement
 18 Section 13-107.1
 19 Annotated Code of Maryland
 20 (2001 Replacement Volume)

21 BY repealing and reenacting, with amendments,
 22 Article - State Government
 23 Section 15-508
 24 Annotated Code of Maryland
 25 (1999 Replacement Volume and 2001 Supplement)

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

28 **Article - State Finance and Procurement**

29 13-102.

30 (a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all
 31 procurement by units shall be by competitive sealed bids unless one of the following
 32 methods specifically is authorized:

- 33 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
 34 subtitle;
- 35 (2) noncompetitive negotiation under § 13-106 of this subtitle;
- 36 (3) sole source procurement under § 13-107 of this subtitle;

- 1 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 2 (5) small procurement under § 13-109 of this subtitle; [or]
- 3 (6) an intergovernmental cooperative purchasing agreement under §
4 13-110 of this subtitle; OR
- 5 (7) AN UNSOLICITED PROPOSAL UNDER § 13-107.1 OF THIS SUBTITLE.
6 13-107.1.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (2) "BUSINESS AND ECONOMIC DEVELOPMENT SERVICES" MEANS
10 SERVICES PROCURED BY THE DEPARTMENT OF BUSINESS AND ECONOMIC
11 DEVELOPMENT.

12 ~~(2)~~ (3) "EDUCATIONAL SERVICES" MEANS SERVICES PROCURED TO
13 PROVIDE ~~OR ASSIST IN PROVIDING~~ TRAINING ~~DIRECTLY~~ TO THIRD-PARTY CLIENTS
14 UNDER A CONTRACT ~~THE PRIMARY PURPOSE OF WHICH IS THE DIRECT PROVISION~~
15 ~~OF THESE SERVICES.~~

16 ~~(3)~~ (4) "HEALTH OR SOCIAL SERVICES" MEANS SERVICES PROCURED
17 TO PROVIDE ~~OR ASSIST IN PROVIDING~~ SUPPORT, CARE, OR SHELTER ~~DIRECTLY~~ TO
18 THIRD-PARTY CLIENTS UNDER A CONTRACT ~~THE PRIMARY PURPOSE OF WHICH IS~~
19 ~~THE DIRECT PROVISION OF THESE SERVICES.~~

20 (B) A PROCUREMENT OFFICER MAY ENTER INTO A CONTRACT BASED ON AN
21 UNSOLICITED PROPOSAL IF THE UNSOLICITED PROPOSAL:

- 22 (1) IS IN WRITING;
- 23 (2) (I) CONTAINS A NOVEL OR INNOVATIVE CONCEPT, APPLICATION,
24 APPROACH, OR METHOD WHICH, TO THE KNOWLEDGE OF THE PROCUREMENT
25 OFFICER, IS NOT USED BY OR AVAILABLE TO ANOTHER UNIT; OR
- 26 (II) DEMONSTRATES A NOVEL CAPABILITY OF THE OFFEROR OF
27 THE PROPOSAL;
- 28 (3) HAS NOT BEEN PREVIOUSLY SUBMITTED TO THE UNIT BY ANOTHER
29 PERSON;
- 30 (4) IS FOR THE DELIVERY OF:
- 31 (I) EDUCATIONAL SERVICES ~~OR~~;
- 32 (II) HEALTH OR SOCIAL SERVICES; ~~OR~~
- 33 (III) *BUSINESS AND ECONOMIC DEVELOPMENT SERVICES*; AND

1 (5) MEETS A NEED OF OR IS OTHERWISE ADVANTAGEOUS TO THE UNIT.

2 (C) (1) THERE IS AN INTERAGENCY PANEL CONSISTING OF
3 REPRESENTATIVES APPOINTED BY THE GOVERNOR FROM THE FOLLOWING:

4 (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

5 (II) THE DEPARTMENT OF HUMAN RESOURCES;

6 (III) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;

7 (IV) THE DEPARTMENT OF JUVENILE JUSTICE;

8 (V) THE OFFICE FOR INDIVIDUALS WITH DISABILITIES;

9 (VI) THE DEPARTMENT OF AGING;

10 (VII) THE DEPARTMENT OF BUSINESS AND ECONOMIC
11 DEVELOPMENT; AND

12 (VIII) THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY.

13 (2) (I) A PROCUREMENT OFFICER SHALL FORWARD AN UNSOLICITED
14 PROPOSAL SUBMITTED UNDER THIS SECTION TO THE INTERAGENCY PANEL
15 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR REVIEW AND A
16 DETERMINATION AS TO WHETHER THE UNSOLICITED PROPOSAL MEETS THE
17 REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION.

18 (II) THE INTERAGENCY PANEL SHALL MAKE A DETERMINATION AS
19 TO WHETHER THE UNSOLICITED PROPOSAL MEETS THE REQUIREMENTS OF
20 SUBSECTION (A) OF THIS SECTION BY A MAJORITY VOTE OF THE PANEL.

21 1. AT A MEETING OF PANEL MEMBERS OR THEIR
22 DESIGNEES;

23 2. BY A TELEPHONE POLL OF PANEL MEMBERS; OR

24 3. IN WRITING.

25 (III) IF THE INTERAGENCY PANEL DETERMINES THAT THE
26 UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (A)
27 OF THIS SECTION, THE PROCUREMENT OFFICER MAY NOT AWARD A PROCUREMENT
28 CONTRACT BASED ON THE UNSOLICITED PROPOSAL.

29 (IV) 1. THE INTERAGENCY PANEL SHALL MAKE A
30 DETERMINATION UNDER SUBPARAGRAPH (1) OF THIS PARAGRAPH WITHIN 30 DAYS
31 AFTER RECEIVING THE UNSOLICITED PROPOSAL FOR REVIEW.

32 2. IF THE INTERAGENCY PANEL FAILS TO MAKE A
33 DETERMINATION UNDER SUBPARAGRAPH (1) OF THIS PARAGRAPH WITHIN THE
34 30-DAY PERIOD ESTABLISHED UNDER THIS SUBPARAGRAPH, THE UNSOLICITED

1 PROPOSAL SHALL BE DEEMED TO HAVE BEEN DISAPPROVED BY THE INTERAGENCY
2 PANEL.

3 ~~(C)~~ (D) IF AN UNSOLICITED PROPOSAL MEETS THE REQUIREMENTS OF
4 SUBSECTION (B) OF THIS SECTION, THE OFFEROR OF THE PROPOSAL IS NOT
5 REQUIRED TO BE THE ONLY AVAILABLE SOURCE FOR THE CONTRACT AWARDED
6 UNDER THIS SECTION.

7 ~~(D)~~ (E) BEFORE AWARDING A PROCUREMENT CONTRACT UNDER THIS
8 SECTION, A PROCUREMENT OFFICER SHALL OBTAIN:

9 (1) THE APPROVAL OF THE HEAD OF THE UNIT; AND

10 (2) ANY OTHER APPROVAL REQUIRED BY LAW.

11 ~~(E)~~ (F) THE TERM, INCLUDING EXTENSIONS, OF A CONTRACT AWARDED
12 UNDER THIS SECTION MAY NOT EXCEED 2 YEARS.

13 ~~(F)~~ (G) STATE EXPENDITURES UNDER A CONTRACT AWARDED UNDER THIS
14 SECTION MAY NOT EXCEED \$1,000,000 ANNUALLY.

15 ~~(G)~~ (H) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS
16 SUBSECTION, A PROCUREMENT OFFICER SHALL TREAT THE INFORMATION
17 CONTAINED IN AN UNSOLICITED PROPOSAL AS CONFIDENTIAL INFORMATION THAT
18 IS NOT SUBJECT TO DISCLOSURE UNDER ANY OTHER STATE OR LOCAL LAW.

19 (2) IF A CONTRACT IS AWARDED UNDER THIS SECTION, DISCLOSURE OF
20 THE UNSOLICITED PROPOSAL IS GOVERNED BY TITLE 10, SUBTITLE 6, PART III OF
21 THE STATE GOVERNMENT ARTICLE.

22 ~~(G)~~ ~~(H)~~ (I) (1) NOT LESS THAN 30 DAYS BEFORE THE EXECUTION AND
23 AWARD OF A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER THIS
24 SECTION, THE CONTRACTING UNIT SHALL PUBLISH A GENERAL NOTICE OF THE
25 INTENT TO AWARD THE CONTRACT IN:

26 (I) THE CONTRACT WEEKLY; AND

27 (II) AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN:

28 1. THE COUNTY OF THE AGENCY TO BE SERVED UNDER THE
29 CONTRACT; AND

30 2. IF APPLICABLE, THE COUNTY OF THE CLIENT
31 POPULATION TO BE SERVED BY THE AGENCY UNDER THE CONTRACT.

32 (2) FOR PURPOSES OF THIS SUBSECTION:

33 (I) THE BALTIMORE SUN AND THE WASHINGTON POST SHALL BE
34 CONSIDERED NEWSPAPERS OF GENERAL CIRCULATION IN THE COUNTIES OF THE
35 STATE; AND

1 (II) IN BALTIMORE CITY, BALTIMORE COUNTY, AND ANNE ARUNDEL
 2 COUNTY, THE BALTIMORE AFRO-AMERICAN SHALL BE CONSIDERED A NEWSPAPER
 3 OF GENERAL CIRCULATION.

4 (3) IF, DURING THE 30-DAY PERIOD ESTABLISHED UNDER PARAGRAPH
 5 (1) OF THIS SUBSECTION, A PERSON PETITIONS THE INTERAGENCY PANEL FOR
 6 RECONSIDERATION OF A DETERMINATION OF APPROVAL UNDER SUBSECTION (B) OF
 7 THIS SECTION, THE INTERAGENCY PANEL SHALL RECONSIDER THE
 8 DETERMINATION OF APPROVAL AND MAKE WRITTEN FINDINGS AFFIRMING OR
 9 REVERSING THE DETERMINATION OF APPROVAL.

10 ~~(H)~~ ~~(I)~~ (J) IN ADDITION TO PUBLISHING NOTICE OF THE INTENT TO
 11 AWARD A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER SUBSECTION ~~(G)~~
 12 (J) OF THIS SECTION, NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND
 13 APPROVAL OF A PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, A UNIT
 14 SHALL PUBLISH NOTICE OF THE AWARD IN THE CONTRACT WEEKLY.

15 ~~(H)~~ ~~(I)~~ (K) THE FOLLOWING AGENCIES SHALL IMPLEMENT AN
 16 EDUCATIONAL OUTREACH CAMPAIGN ON THE AVAILABILITY OF THE UNSOLICITED
 17 PROPOSAL METHOD OF PROCUREMENT:

- 18 (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;
- 19 (2) THE DEPARTMENT OF HUMAN RESOURCES;
- 20 (3) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;
- 21 (4) THE DEPARTMENT OF JUVENILE JUSTICE;
- 22 (5) THE OFFICE FOR INDIVIDUALS WITH DISABILITIES; ~~AND~~
- 23 (6) THE DEPARTMENT OF AGING; AND
- 24 (7) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

25 **Article - State Government**

26 15-508.

27 (a) An individual or a person that employs an individual who assists an
 28 executive unit in the drafting of specifications, an invitation for bids, a request for
 29 proposals for a procurement, or the selection or award made in response to an
 30 invitation for bids or request for proposals may not:

- 31 (1) submit a bid or proposal for that procurement; or
- 32 (2) assist or represent another person, directly or indirectly, who is
 33 submitting a bid or proposal for that procurement.

1 (b) For purposes of subsection (a) of this section, assisting in the drafting of
2 specifications, an invitation for bids, or a request for proposals for a procurement does
3 not include:

4 (1) providing descriptive literature such as catalogue sheets, brochures,
5 technical data sheets, or standard specification "samples", whether requested by an
6 executive agency or provided on an unsolicited basis;

7 (2) submitting written comments on a specification prepared by an
8 agency or on a solicitation for a bid or proposal when comments are solicited from two
9 or more persons as part of a request for information or a prebid or preproposal
10 process;

11 (3) providing specifications for a sole source procurement made in
12 accordance with § 13-107 of the State Finance and Procurement Article; [or]

13 (4) providing architectural and engineering services for programming,
14 master planning, or other project planning services; OR

15 (5) PROVIDING SPECIFICATIONS FOR AN UNSOLICITED PROPOSAL
16 PROCUREMENT MADE IN ACCORDANCE WITH § 13-107.1 OF THE STATE FINANCE AND
17 PROCUREMENT ARTICLE.

18 SECTION 2. AND BE IT FURTHER ENACTED, That on or before September
19 30 of each year the Department of Budget and Management shall report to the
20 Governor and, in accordance with § 2-1246 of the State Government Article, the
21 Senate Education, Health, and Environmental Affairs Committee and the House
22 Commerce and Government Matters Committee, on the impact of this Act, including
23 for the previous fiscal year:

24 (1) the number of unsolicited proposals awarded by each contracting unit;

25 (2) the monetary amounts of the contracts awarded under this Act;

26 (3) the goods or services for which contracts were awarded under this Act; and

27 (4) the number of contract awardees under this Act who were certified
28 minority business enterprises.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only
30 to an unsolicited proposal offered on or after the effective date of this Act.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2002. It shall remain effective for a period of 6 years and, at the end of
33 September 30, 2008, with no further action required by the General Assembly, this
34 Act shall be abrogated and of no further force and effect.

