

SENATE BILL 56

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2004 Regular Session
4r0035

(PRE-FILED)

By: **Chairman, Education, Health, and Environmental Affairs Committee**
(By Request - Departmental - Transportation)

Requested: November 3, 2003
Introduced and read first time: January 14, 2004
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 16, 2004

CHAPTER 84

1 AN ACT concerning

2 **State Ethics Law - Architectural and Engineering Services - Restrictions on**
3 **Participation in Procurement**

4 FOR the purpose of ~~clarifying~~ providing that certain design activities do not
5 disqualify an individual from participating in or assisting others in
6 participating in certain procurements; requiring the Maryland Department of
7 Transportation to report to certain persons by a certain date regarding the
8 implementation of this Act; providing for the application of this Act; providing
9 for the effective ~~date of certain provisions~~ dates of this Act; ~~and~~ providing for the
10 termination of certain provisions of this Act; and generally relating to
11 procurement for design activities under the State ethics law.

12 BY repealing and reenacting, with amendments,
13 Article - State Government
14 Section 15-508
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - State Government
19 Section 15-508
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2003 Supplement)
22 (As enacted by ~~Chapter 482 of the Acts of the General Assembly of 2002~~ Section

1 1 of this Act)

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

4 **Article - State Government**

5 15-508.

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

10 (1) submit a bid or proposal for that procurement; or

11 (2) assist or represent another person, directly or indirectly, who is
12 submitting a bid or proposal for that procurement.

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

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

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

23 (3) providing specifications for a sole source procurement made in
24 accordance with § 13-107 of the State Finance and Procurement Article;

25 (4) providing architectural and engineering services for:

26 (I) programming, master planning, or other project planning
27 services, ~~INCLUDING PRELIMINARY DESIGN SERVICES THAT INVOLVE NO~~
28 ~~CONSTRUCTION PHASE RESPONSIBILITIES~~; or

29 (II) THE DESIGN OF A CONSTRUCTION PROJECT IF:

30 1. THE ANTICIPATED VALUE OF THE PROCUREMENT
31 CONTRACT AT THE TIME OF ADVERTISEMENT IS AT LEAST \$2,500,000 AND NOT MORE
32 THAN \$40,000,000; AND

33 2. THE DESIGN SERVICES DO NOT INVOLVE LEAD OR PRIME
34 DESIGN RESPONSIBILITIES OR CONSTRUCTION PHASE RESPONSIBILITIES ON
35 BEHALF OF THE STATE; OR

1 (5) providing specifications for an unsolicited proposal procurement
2 made in accordance with § 13-107.1 of the State Finance and Procurement Article.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article - State Government**

6 15-508.

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

11 (1) submit a bid or proposal for that procurement; or

12 (2) assist or represent another person, directly or indirectly, who is
13 submitting a bid or proposal for that procurement.

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

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

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

24 (3) providing specifications for a sole source procurement made in
25 accordance with § 13-107 of the State Finance and Procurement Article; ~~or~~

26 ~~(4) providing architectural and engineering services for programming,~~
27 ~~master planning, or other project planning services, INCLUDING PRELIMINARY~~
28 ~~DESIGN SERVICES THAT INVOLVE NO CONSTRUCTION PHASE RESPONSIBILITIES~~

29 (4) providing architectural and engineering services for:

30 (i) programming, master planning, or other project planning
31 services; or

32 (ii) the design of a construction project if:

33 1. the anticipated value of the procurement contract at the
34 time of advertisement is at least \$2,500,000 and not more than [\$40,000,000]
35 \$100,000,000; and

1 2. the design services do not involve lead or prime design
2 responsibilities on construction phase responsibilities on behalf of the State; or

3 (5) providing specifications for an unsolicited proposal procurement
4 made in accordance with § 13-107.1 of the State Finance and Procurement Article.

5 SECTION 3. AND BE IT FURTHER ENACTED, That on or before September
6 30, 2005, and annually thereafter through September 30, 2008, inclusive, the
7 Maryland Department of Transportation shall report to the Governor and, in
8 accordance with § 2-1246 of the State Government Article, to the General Assembly
9 regarding the implementation of this Act by the Department during the immediately
10 preceding fiscal year, including the impact of this Act on small business and minority
11 business enterprises.

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be
13 construed to apply only prospectively and may not be applied or interpreted to have
14 any effect on or application to any project or program that has been advertised for
15 construction before the effective date of this Act.

16 SECTION 5. AND BE IT FURTHER ENACTED, That, notwithstanding the
17 abrogation of this Act, this Act shall be applicable to any procurement contract in
18 connection with a project or program for which:

19 (1) final review under the National Environmental Policy Act or the
20 Maryland Environmental Policy Act is completed on or before June 30, 2008; or

21 (2) an appropriation has been included on or before June 30, 2008, in the
22 development and evaluation portion of the Consolidated Transportation Program.

23 ~~SECTION 3. 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act~~
24 ~~shall take effect on the taking effect of the termination provision specified in Section~~
25 ~~4 of Chapter 482 of the Acts of the General Assembly of 2002. If that termination~~
26 ~~provision takes effect, Section 1 of this Act shall be abrogated and of no further force~~
27 ~~and effect. This Act may not be interpreted to have any effect on that termination~~
28 ~~provision July 1, 2006.~~

29 SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall
30 take effect July 1, 2004. It shall remain effective for a period of 4 years and 3 months
31 and, at the end of September 30, 2008, with no further action required by the General
32 Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.

33 ~~SECTION 4. 8. AND BE IT FURTHER ENACTED, That, subject to the~~
34 ~~provisions of Section 3 of this Act, this Act shall take effect October 1, 2004 except as~~
35 ~~provided in Sections 6 and 7 of this Act, this Act shall take effect July 1, 2004. It shall~~
36 ~~remain effective for a period of 4 years and, at the end of June 30, 2008, with no~~
37 ~~further action required by the General Assembly, this Act shall be abrogated and of no~~
38 ~~further force and effect.~~

