

HOUSE BILL 738

P2, G2

(5lr2251)

ENROLLED BILL

— Health and Government Operations/Education, Health, and Environmental Affairs —

Introduced by **Delegate Krebs**

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.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Jurisdiction of the State Ethics Commission and the Maryland State Board of**
3 **Contract Appeals – Participation in Procurement**

4 FOR the purpose of amending and transferring from the State Ethics Commission to the
5 Maryland State Board of Contract Appeals jurisdiction of certain provisions of law
6 prohibiting certain participation in procurement by a ~~certain individual or a certain~~
7 ~~person that employs a certain individual who assists~~ certain person who has assisted
8 certain individual or a certain person that employs a certain individual who assists
9 a certain executive unit in the drafting of specifications, an invitation for bids, a
10 request for proposals for procurements, or the selections or awards made in response
11 to an invitation for bids or a request for proposals; ~~providing that the prohibition~~
12 ~~against a certain individual participating in a certain procurement only applies for~~
13 ~~a certain period of time following the issuance of an invitation for bids or a request~~
14 ~~for proposals;~~ providing that certain provisions of law relating to dispute resolution
15 by the Maryland State Board of Contract Appeals apply to certain protests relating

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

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

Italics indicate opposite chamber/conference committee amendments.



1 to the formation of a procurement contract for architectural services or engineering
 2 services; clarifying that violations of certain provisions of law are within the
 3 jurisdiction of the Maryland State Board of Contract ~~of~~ Appeals; and generally
 4 relating to participation in procurement and the jurisdiction of the State Ethics
 5 Commission and the Maryland State Board of Contract Appeals.

6 BY repealing

7 Article – General Provisions

8 Section 5–508

9 Annotated Code of Maryland

10 (2014 Volume)

11 BY adding to

12 Article – State Finance and Procurement

13 Section 13–212.1

14 Annotated Code of Maryland

15 (2009 Replacement Volume and 2014 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – State Finance and Procurement

18 Section 15–202 and 15–211

19 Annotated Code of Maryland

20 (2009 Replacement Volume and 2014 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

22 That the Laws of Maryland read as follows:

23 **Article – General Provisions**

24 **[5–508.**

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

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

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

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

1 (1) providing descriptive literature such as catalogue sheets, brochures,
2 technical data sheets, or standard specification “samples”, whether requested by an
3 executive unit or provided unsolicited;

4 (2) submitting written or oral comments on a specification prepared by an
5 executive unit or on a solicitation for a bid or proposal when comments are solicited from
6 two or more persons as part of a request for information or a prebid or preproposal process;

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

9 (4) providing architectural and engineering services for:

10 (i) programming, master planning, or other project planning
11 services; or

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

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

15 2. A. the anticipated value of the procurement contract at
16 the time of advertisement is at least \$2,500,000 and not more than \$100,000,000; or

17 B. regardless of the amount of the procurement contract, the
18 payment to the individual or person for the design services does not exceed \$500,000; or

19 (5) for a procurement of health, human, social, or educational services,
20 comments solicited from two or more persons as part of a request for information, including
21 written or oral comments on a draft specification, invitation for bids, or request for
22 proposals.

23 (c) A unit that receives comments as described in subsection (b)(2) and (5) of this
24 section shall retain:

25 (1) any written comments; and

26 (2) a record of any oral comments.]

27 Article – State Finance and Procurement

28 13–212.1.

29 ~~(A) AN INDIVIDUAL WHO ASSISTS AN EXECUTIVE UNIT IN THE DRAFTING OF~~
30 ~~SPECIFICATIONS, AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS FOR A~~
31 ~~PROCUREMENT, OR THE SELECTION OR AWARD MADE IN RESPONSE TO AN~~

1 ~~INVITATION FOR BIDS OR A REQUEST FOR PROPOSALS, OR A PERSON THAT EMPLOYS~~
 2 ~~THE INDIVIDUAL, MAY NOT:~~

3 ~~(A) FOR 1 YEAR FOLLOWING THE ISSUANCE OF AN INVITATION FOR BIDS OR~~
 4 ~~A REQUEST FOR PROPOSALS FOR A PROCUREMENT, A PERSON WHO HAS ASSISTED~~
 5 ~~AN EXECUTIVE UNIT IN DRAFTING THE SPECIFICATIONS FOR THE INVITATION FOR~~
 6 ~~BIDS OR REQUEST FOR PROPOSALS, OR WHO HAS ASSISTED IN THE SELECTION OR~~
 7 ~~AWARD MADE IN RESPONSE TO THE INVITATION FOR BIDS OR REQUEST FOR~~
 8 ~~PROPOSALS MAY NOT:~~

9 (A) AN INDIVIDUAL WHO ASSISTS AN EXECUTIVE UNIT IN THE DRAFTING OF
 10 SPECIFICATIONS, AN INVITATION FOR BIDS, A REQUEST FOR PROPOSALS FOR A
 11 PROCUREMENT, OR THE SELECTION OR AWARD MADE IN RESPONSE TO AN
 12 INVITATION FOR BIDS OR A REQUEST FOR PROPOSALS, OR A PERSON THAT EMPLOYS
 13 THE INDIVIDUAL, MAY NOT:

14 (1) SUBMIT A BID OR PROPOSAL FOR THAT PROCUREMENT; OR

15 (2) ASSIST OR REPRESENT ANOTHER PERSON, DIRECTLY OR
 16 INDIRECTLY, WHO IS SUBMITTING A BID OR PROPOSAL FOR THAT PROCUREMENT.

17 (B) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, ASSISTING IN THE
 18 DRAFTING OF SPECIFICATIONS, AN INVITATION FOR BIDS, OR A REQUEST FOR
 19 PROPOSALS FOR A PROCUREMENT DOES NOT INCLUDE:

20 (1) PROVIDING DESCRIPTIVE LITERATURE, SUCH AS CATALOGUE
 21 SHEETS, BROCHURES, TECHNICAL DATA SHEETS, OR STANDARD SPECIFICATION
 22 "SAMPLES", WHETHER REQUESTED BY AN EXECUTIVE UNIT OR PROVIDED
 23 UNSOLICITED;

24 (2) SUBMITTING WRITTEN OR ORAL COMMENTS ON A SPECIFICATION
 25 PREPARED BY AN EXECUTIVE UNIT OR ON A SOLICITATION FOR A BID OR PROPOSAL
 26 WHEN COMMENTS ARE SOLICITED FROM TWO OR MORE PERSONS AS PART OF A
 27 REQUEST FOR INFORMATION OR A PREBID OR PREPROPOSAL PROCESS;

28 (3) PROVIDING SPECIFICATIONS FOR A SOLE SOURCE PROCUREMENT
 29 MADE IN ACCORDANCE WITH § 13-107 OF THIS ARTICLE;

30 (4) PROVIDING ARCHITECTURAL AND ENGINEERING SERVICES FOR:

31 (I) PROGRAMMING, MASTER PLANNING, OR OTHER PROJECT
 32 PLANNING SERVICES; OR

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

1 1. THE DESIGN SERVICES DO NOT INVOLVE LEAD OR
2 PRIME DESIGN RESPONSIBILITIES OR CONSTRUCTION PHASE RESPONSIBILITIES ON
3 BEHALF OF THE STATE; AND

4 2. A. THE ANTICIPATED VALUE OF THE
5 PROCUREMENT CONTRACT AT THE TIME OF ADVERTISEMENT IS AT LEAST
6 \$2,500,000 AND NOT MORE THAN \$100,000,000; OR

7 B. REGARDLESS OF THE AMOUNT OF THE
8 PROCUREMENT CONTRACT, THE PAYMENT TO THE INDIVIDUAL OR PERSON FOR THE
9 DESIGN SERVICES DOES NOT EXCEED \$500,000; OR

10 (5) FOR A PROCUREMENT OF HEALTH, HUMAN, SOCIAL, OR
11 EDUCATIONAL SERVICES, COMMENTS SOLICITED FROM TWO OR MORE PERSONS AS
12 PART OF A REQUEST FOR INFORMATION, INCLUDING WRITTEN OR ORAL COMMENTS
13 ON A DRAFT SPECIFICATION, AN INVITATION FOR BIDS, OR A REQUEST FOR
14 PROPOSALS.

15 (C) A UNIT THAT RECEIVES COMMENTS AS DESCRIBED IN SUBSECTION
16 (B)(2) AND (5) OF THIS SECTION SHALL RETAIN:

17 (1) ANY WRITTEN COMMENTS; AND

18 (2) A RECORD OF ANY ORAL COMMENTS.

19 15-202.

20 This subtitle does not apply to a protest concerning:

21 (1) EXCEPT FOR A PROTEST RELATING TO A VIOLATION OF § 13-212.1
22 OF THIS ARTICLE, the formation of a procurement contract for architectural services or
23 engineering services; or

24 (2) except to the extent authorized by regulation by the Board, any act or
25 omission by a procurement agency under Title 14, Subtitle 6 of this article.

26 15-211.

27 (a) The Appeals Board shall have jurisdiction to hear and decide all appeals
28 arising from the final action of a unit:

29 (1) on a protest relating to the formation of a procurement contract,
30 INCLUDING A VIOLATION OF § 13-212.1 OF THIS ARTICLE; or

1 (2) except for a contract claim relating to a lease of real property, on a
2 contract claim by a contractor or a unit concerning:

- 3 (i) breach;
- 4 (ii) performance;
- 5 (iii) modification; or
- 6 (iv) termination.

7 (b) A decision of the Appeals Board is final, subject to any judicial review.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.