

Chapter 271

(House Bill 738)

AN ACT concerning

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

FOR the purpose of amending and transferring from the State Ethics Commission to the Maryland State Board of Contract Appeals jurisdiction of certain provisions of law prohibiting certain participation in procurement by a ~~certain individual or a certain person that employs a certain individual who assists~~ certain person who has assisted certain individual or a certain person that employs a certain individual who assists a certain executive unit in the drafting of specifications, an invitation for bids, a request for proposals for procurements, or the selections or awards made in response to an invitation for bids or a request for proposals; ~~providing that the prohibition against a certain individual participating in a certain procurement only applies for a certain period of time following the issuance of an invitation for bids or a request for proposals;~~ providing that certain provisions of law relating to dispute resolution by the Maryland State Board of Contract Appeals apply to certain protests relating to the formation of a procurement contract for architectural services or engineering services; clarifying that violations of certain provisions of law are within the jurisdiction of the Maryland State Board of Contract ~~of~~ Appeals; and generally relating to participation in procurement and the jurisdiction of the State Ethics Commission and the Maryland State Board of Contract Appeals.

BY repealing

Article – General Provisions
Section 5–508
Annotated Code of Maryland
(2014 Volume)

BY adding to

Article – State Finance and Procurement
Section 13–212.1
Annotated Code of Maryland
(2009 Replacement Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
Section 15–202 and 15–211
Annotated Code of Maryland
(2009 Replacement Volume and 2014 Supplement)

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

Article – General Provisions

[5–508.

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

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

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

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

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

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

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

(4) providing architectural and engineering services for:

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

(ii) the design of a construction project if:

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

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

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

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

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

- (1) any written comments; and
- (2) a record of any oral comments.]

Article – State Finance and Procurement

13-212.1.

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

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

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

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

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

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

(1) PROVIDING DESCRIPTIVE LITERATURE, SUCH AS CATALOGUE SHEETS, BROCHURES, TECHNICAL DATA SHEETS, OR STANDARD SPECIFICATION “SAMPLES”, WHETHER REQUESTED BY AN EXECUTIVE UNIT OR PROVIDED UNSOLICITED;

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

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

(4) PROVIDING ARCHITECTURAL AND ENGINEERING SERVICES FOR:

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

(II) THE DESIGN OF A CONSTRUCTION PROJECT IF:

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

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

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

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

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

(1) ANY WRITTEN COMMENTS; AND

(2) A RECORD OF ANY ORAL COMMENTS.

15-202.

This subtitle does not apply to a protest concerning:

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

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

15-211.

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

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

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

- (i) breach;
- (ii) performance;
- (iii) modification; or
- (iv) termination.

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

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

Approved by the Governor, May 12, 2015.