

# HOUSE BILL 195

P2

6lr1446

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By: **Delegates Krebs, W. Miller, Rose, and West**

Introduced and read first time: January 21, 2016

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 24, 2016

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – ~~Prohibition~~ Prohibitions on Participation**

3 FOR the purpose of ~~altering to whom certain provisions of law apply that prohibit certain~~  
4 ~~participation in procurement~~; providing that ~~the prohibition against a certain person~~  
5 ~~participating in a certain procurement applies~~ certain prohibitions on participation  
6 in procurement apply only for a certain period of time following the issuance of an  
7 invitation for bids or a request for proposals; providing that certain prohibitions on  
8 participation in procurement do not apply to certain invitations for bids or requests  
9 for proposals; and generally relating to the ~~prohibition~~ prohibitions on participation  
10 in procurement.

11 BY repealing and reenacting, with amendments,  
12 Article – State Finance and Procurement  
13 Section 13–212.1  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume)

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

18 **Article – State Finance and Procurement**

19 13–212.1.

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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.



1 (a) ~~Am~~ EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN  
2 individual who assists an executive unit in the drafting of specifications, an invitation for  
3 bids, a request for proposals for a procurement, or the selection or award made in response  
4 to an invitation for bids or a request for proposals, or a person that employs the individual,  
5 ~~FOR 1 YEAR FOLLOWING THE ISSUANCE OF AN INVITATION FOR BIDS OR A REQUEST~~  
6 ~~FOR PROPOSALS FOR A PROCUREMENT, A PERSON WHO HAS ASSISTED AN~~  
7 ~~EXECUTIVE UNIT IN DRAFTING THE SPECIFICATIONS FOR THE INVITATION FOR BIDS~~  
8 ~~OR REQUEST FOR PROPOSALS OR WHO HAS ASSISTED IN THE SELECTION OR AWARD~~  
9 ~~MADE IN RESPONSE TO THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS~~ may  
10 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 not  
16 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 unit or provided unsolicited;

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

23 (3) providing specifications for a sole source procurement made in  
24 accordance with § 13–107 of this article;

25 (4) providing architectural and engineering services for:

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

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

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

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

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

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

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

7 (1) any written comments; and

8 (2) a record of any oral comments.

9 **(D) (1) THE PROHIBITIONS ESTABLISHED UNDER SUBSECTION (A) OF**  
10 **THIS SECTION APPLY FROM THE DATE OF ISSUANCE OF THE FIRST INVITATION FOR**  
11 **BIDS OR REQUEST FOR PROPOSALS FOR WHICH THE SPECIFICATIONS WERE**  
12 **INITIALLY DRAFTED UNTIL THE LATER OF:**

13 **(I) 2 YEARS FROM THE DATE OF ISSUANCE; OR**

14 **(II) THE SELECTION OR AWARD OF A PROCUREMENT CONTRACT**  
15 **IN RESPONSE TO THE ISSUANCE OF THE INVITATION FOR BIDS OR REQUEST FOR**  
16 **PROPOSALS OR A REISSUANCE OF THE INVITATION FOR BIDS OR REQUEST FOR**  
17 **PROPOSALS FOR WHICH THE SPECIFICATIONS WERE INITIALLY DRAFTED.**

18 **(2) THE PROHIBITIONS ESTABLISHED UNDER SUBSECTION (A) OF**  
19 **THIS SECTION DO NOT APPLY TO A SUBSEQUENT INVITATION FOR BIDS OR REQUEST**  
20 **FOR PROPOSALS FOR WHICH THE SPECIFICATIONS ARE REUSED AFTER THE INITIAL**  
21 **PROHIBITION IS NO LONGER APPLICABLE IN ACCORDANCE WITH PARAGRAPH (1) OF**  
22 **THIS SUBSECTION.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.