
By: **Delegates Brinkley, Benson, Clagett, Moe, Snodgrass, and Poole**

Introduced and read first time: February 9, 1998

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Process - Source Selection - Competitive Sealed**
3 **Proposals**

4 FOR the purpose of providing that the use of competitive sealed proposals is a
5 preferred source selection method under the State procurement law for services
6 or supplies where primary emphasis on price is unlikely to assure that the State
7 obtains the best value; repealing restrictions on the use of a competitive sealed
8 proposal process; modifying the preference for competitive sealed bids; and
9 generally relating to the use of competitive sealed proposals in the awarding of
10 State procurement contracts.

11 BY repealing and reenacting, with amendments,
12 Article - State Finance and Procurement
13 Section 13-102 and 13-104
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1997 Supplement)

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

18 **Article - State Finance and Procurement**

19 13-102.

20 (a) Except as provided in Subtitle 3 of this title, all procurement by units shall
21 be by competitive sealed bids OR COMPETITIVE SEALED PROPOSALS unless one of the
22 following methods specifically is authorized:

23 (1) [competitive sealed proposals under § 13-104 or § 13-105 of this
24 subtitle;

25 (2)] noncompetitive negotiation under § 13-106 of this subtitle;

26 [(3)] (2) sole source procurement under § 13-107 of this subtitle;

1 [(4)] (3) emergency or expedited procurement under § 13-108 of this
2 subtitle;

3 [(5)] (4) small procurement under § 13-109 of this subtitle; or

4 [(6)] (5) an intergovernmental cooperative purchasing agreement under
5 § 13-110 of this subtitle.

6 (b) (1) In awarding a procurement contract for human, social, cultural, or
7 educational service, **OR FOR ANY OTHER SERVICES OR SUPPLIES WHERE PRIMARY**
8 **EMPHASIS ON PRICE IS UNLIKELY TO ASSURE THAT THE STATE OBTAINS THE BEST**
9 **VALUE**, the preferred method is by competitive sealed proposals under § 13-104 of
10 this subtitle.

11 (2) In awarding a procurement contract for a lease of real property, the
12 preferred method is by competitive sealed proposals under § 13-105 of this subtitle.

13 (3) Procurement under an intergovernmental cooperative purchasing
14 agreement is appropriate in situations where the State is expected to achieve a better
15 price as the result of economies of scale or to otherwise benefit by purchasing in
16 cooperation with another governmental entity.

17 13-104.

18 (a) [Competitive sealed proposals may be used if:

19 (1) the procurement is for human, social, cultural, or educational
20 services;

21 (2) with the approval of the head of a unit, the procurement officer
22 determines that specifications cannot be prepared that allow an award based on the
23 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
24 11-202(3) of this article, the bid most favorable to the State; or

25 (3) the head of the unit determines that:

26 (i) the need to use a method other than competitive sealed bids is
27 sufficiently compelling to override the general public policy that favors awarding
28 procurement contracts on the basis of competitive sealed bids; and

29 (ii) the use of competitive sealed bidding for that procurement
30 contract is not practicable or not advantageous to the State.

31 (b)] (1) Whenever procurement is based on competitive sealed proposals, a
32 procurement officer shall seek proposals by issuing a request for proposals.

33 (2) A request for proposals shall include a statement of:

34 (i) the scope of the procurement contract;

1 (ii) the factors, including price, that will be used in evaluating
2 proposals; and

3 (iii) the relative importance of each factor.

4 [(c)] (B) A unit shall publish a request for proposals in the same manner as
5 required for an invitation for bids.

6 [(d)] (C) (1) After receipt of proposals but before the procurement officer
7 awards the procurement contract, a unit may conduct discussions with an offeror to:

8 (i) obtain the best price for the State; and

9 (ii) ensure full understanding of:

10 1. the requirements of the State, as set forth in the request
11 for proposals; and

12 2. the proposal submitted by the offeror.

13 (2) If discussions are conducted, the unit:

14 (i) shall conduct the discussions in accordance with regulations
15 adopted under this Division II;

16 (ii) shall provide an opportunity to participate to each responsible
17 offeror who submits a proposal that, in the judgment of the procurement officer, is
18 reasonably susceptible of being selected for award;

19 (iii) shall treat all of those responsible offerors fairly and equally;

20 (iv) may allow all of those responsible offerors to revise their initial
21 proposals by submitting best and final offers, if discussions indicate that it would be
22 in the best interests of the State to do so;

23 (v) may conduct more than 1 series of discussions and requests for
24 best and final offers; and

25 (vi) may not disclose to an offeror any information derived from a
26 proposal of or discussions with a competing offeror.

27 [(e)] (D) (1) Except as provided in paragraph (2) of this subsection:

28 (i) a proposal is irrevocable for the period specified in the request
29 for proposals; and

30 (ii) a best and final offer is irrevocable for the period specified in
31 the request for best and final offers.

32 (2) A procurement officer may allow an offeror to correct or withdraw a
33 proposal or best and final offer if correction or withdrawal is:

1 (i) allowed under regulations adopted under this Division II; and

2 (ii) approved in writing by the Office of the Attorney General.

3 [(f)] (E) After obtaining any approval required by law, the procurement
4 officer shall award the procurement contract to the responsible offeror who submits
5 the proposal or best and final offer determined to be the most advantageous to the
6 State considering the evaluation factors set forth in the request for proposals.

7 [(g)] (F) A unit shall publish in the Contract Weekly notice of a contract in
8 excess of \$25,000 awarded under this section, or a lower amount set by the Board by
9 regulation in accordance with Title 10, Subtitle 1 of the State Government Article.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1998.