

HOUSE BILL 383

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P2

2001 Regular Session
11r1376
CF 11r1365

By: **Delegates Busch and Kach (Task Force on Regulatory Reform)**

Introduced and read first time: January 31, 2001

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Unsolicited Proposals**

3 FOR the purpose of authorizing a unit of State government to award a contract for
4 goods or services in response to an unsolicited proposal; providing that the
5 award of a contract for an unsolicited proposal is not subject to certain statutory
6 procedures for the award of a contract; requiring that the contracting unit
7 certify to the Board of Public Works certain facts and circumstances; requiring
8 the Board to approve in writing an award based on an unsolicited proposal;
9 limiting the term of an award based on an unsolicited proposal; requiring the
10 publication of a notice of award of contract for an unsolicited proposal; defining
11 "unsolicited proposal"; exempting an award of an unsolicited proposal from
12 certain statutory limitations relating to participation in procurement; providing
13 for the application of this Act; and generally relating to unsolicited proposals.

14 BY adding to
15 Article - State Finance and Procurement
16 Section 13-111
17 Annotated Code of Maryland
18 (1995 Replacement Volume and 2000 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - State Government
21 Section 15-508
22 Annotated Code of Maryland
23 (1999 Replacement Volume and 2000 Supplement)

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

1 **Article - State Finance and Procurement**

2 13-111.

3 (A) IN THIS SECTION, "UNSOLICITED PROPOSAL" MEANS AN OFFER BY A
4 VENDOR OR PRODUCER OF GOODS OR SERVICES WHICH WAS NOT INITIALLY
5 SOLICITED BY THE UNIT OF STATE GOVERNMENT WHICH EVENTUALLY CONTRACTS
6 FOR THOSE GOODS OR SERVICES.

7 (B) A UNIT OF STATE GOVERNMENT OTHERWISE LEGALLY AUTHORIZED TO
8 CONTRACT FOR GOODS OR SERVICES MAY AWARD A CONTRACT FOR GOODS OR
9 SERVICES BASED ON AN UNSOLICITED PROPOSAL WITHOUT COMPLYING WITH THE
10 REQUIRED PROCEDURES FOR SOLE SOURCE PROCUREMENT UNDER § 13-108 OF THIS
11 SUBTITLE OR THE PROCEDURES FOR PROCUREMENT THROUGH COMPETITIVE
12 SEALED BIDS OR PROPOSALS UNDER §§ 13-103 AND 13-104 OF THIS SUBTITLE IF:

13 (1) THERE IS A STATE NEED FOR THE GOODS OR SERVICES;

14 (2) THE CONTRACTING UNIT:

15 (I) CERTIFIES TO THE BOARD THAT:

16 1. THE PROPOSAL IS INNOVATIVE; AND

17 2. THE GOODS OR SERVICES BEING PROCURED DO NOT
18 CLOSELY RESEMBLE GOODS OR SERVICES THAT ARE OTHERWISE AVAILABLE;

19 (II) CERTIFIES TO THE BOARD THAT EXISTING FACTS AND
20 CIRCUMSTANCES MAKE THE USE OF SOLE SOURCE PROCUREMENT PROCEDURES OR
21 COMPETITIVE SEALED BID OR COMPETITIVE SEALED PROPOSAL PROCUREMENT
22 PROCEDURES INEFFECTIVE OR NOT COST-EFFECTIVE; AND

23 (III) STATES THE SUPPORTING FACTS AND CIRCUMSTANCES; AND

24 (3) THE BOARD OF PUBLIC WORKS APPROVES THE AWARD IN WRITING
25 BEFORE THE CONTRACT IS EXECUTED.

26 (C) A CONTRACT UNDER THIS SECTION MAY NOT BE AWARDED FOR MORE
27 THAN 2 YEARS.

28 (D) NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A
29 PROCUREMENT CONTRACT BASED ON AN UNSOLICITED PROPOSAL AWARDED UNDER
30 THIS SECTION, THE PROCURING UNIT SHALL PUBLISH NOTICE OF THE AWARD IN
31 THE CONTRACT WEEKLY.

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Article - State Government

2 15-508.

3 (a) [An] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN
4 individual or a person that employs an individual who assists an executive unit in the
5 drafting of specifications, an invitation for bids, a request for proposals for a
6 procurement, or the selection or award made in response to an invitation for bids or
7 request for proposals may not:

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

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

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

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

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

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

23 (4) providing architectural and engineering services for programming,
24 master planning, or other project planning services.

25 (C) THIS SECTION DOES NOT APPLY TO A CONTRACT DRAFTED FOR AN
26 UNSOLICITED PROPOSAL UNDER § 13-111 OF THE STATE FINANCE AND
27 PROCUREMENT ARTICLE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2001 and shall apply to any unsolicited proposal offered on or after the
30 effective date of this Act.