

SENATE BILL 693

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P2

2001 Regular Session
11r1844
CF 11r1261

By: **Senator Collins**

Introduced and read first time: February 2, 2001

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Maryland Construction Quality Assurance Act**

3 FOR the purpose of establishing the best value contracting method of procurement for
4 certain construction contracts to be known as the Maryland Construction
5 Quality Assurance Act; requiring a certain proposal for certain construction
6 procurement contracts to contain certain information; providing for notice of
7 certain construction procurement contracts; requiring the prelisting of certain
8 subcontractors; providing the conditions for prelisting a certain subcontractor;
9 requiring a certain proposal to be evaluated in a certain manner; requiring the
10 head of a certain procurement unit to create certain evaluation teams; providing
11 the process for review of a certain proposal; providing the legislative intent and
12 scope of the Act; defining certain terms; authorizing the adoption of certain
13 regulations; and generally relating to establishing the Maryland Construction
14 Quality Assurance Act.

15 By repealing and reenacting, with amendments,
16 Article - State Finance and Procurement
17 Section 13-102(a)
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 2000 Supplement)

20 BY adding to
21 Article - State Finance and Procurement
22 Section 13-401 through 13-410, inclusive, to be under the new subtitle "Subtitle
23 4. Maryland Construction Quality Assurance Act"
24 Annotated Code of Maryland
25 (1995 Replacement Volume and 2000 Supplement)

26 Preamble

27 WHEREAS, Competitive Best Value contracting is now being utilized
28 extensively by federal government agencies as the predominant contracting method
29 for federal public works; and

1 WHEREAS, An increasing number of state governments are also using the
2 Competitive Best Value contracting method for construction contracts, including
3 Delaware, New Jersey, Georgia, Hawaii and Kentucky; and

4 WHEREAS, The Maryland Stadium Authority and the University System of
5 Maryland, with the approval of the Board of Public Works, use the Competitive Best
6 Value contracting method and now utilize this process as their preferred method of
7 contracting for construction; and

8 WHEREAS, Virtually all other Maryland State agencies still use sealed bidding
9 as their primary method for public works construction, which requires contracts to be
10 awarded to the lowest responsible bidder; and

11 WHEREAS, The Competitive Best Value contracting method promotes greater
12 quality and cost-efficiency in construction contracting by requiring a systematic
13 examination of the performance records, technical qualifications, firm resources, and
14 management capabilities of competing contractors and making contracting decisions
15 based on these factors, as well as price; and

16 WHEREAS, The purpose of the Act is to promote greater quality, cost-efficiency,
17 and accountability in Maryland public works construction and ensure that State
18 contracting agencies and taxpayers receive the most advantageous results from State
19 construction contracts; and

20 WHEREAS, The Act seeks to achieve these objectives by creating a separate
21 statutory program designed to address the unique needs and demands of public works
22 construction contracting with procedures designed to:

23 (1) utilize Competitive Best Value contracting as the procurement and
24 source selection method for State construction contracts;

25 (2) require State contracting agencies to use uniform, consistent
26 methods for examining and evaluating contractor qualifications and performance;
27 and

28 (3) promote more effective realization of minority business enterprise
29 contracting goals for minority, women, and small business firms on State public
30 works projects; now, therefore,

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

33 **Article - State Finance and Procurement**

34 13-102.

35 (a) Except as provided in [Subtitle] SUBTITLES 3 AND 4 of this title, all
36 procurement by units shall be by competitive sealed bids unless one of the following
37 methods specifically is authorized:

- 1 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
2 subtitle;
- 3 (2) noncompetitive negotiation under § 13-106 of this subtitle;
- 4 (3) sole source procurement under § 13-107 of this subtitle;
- 5 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 6 (5) small procurement under § 13-109 of this subtitle; or
- 7 (6) an intergovernmental cooperative purchasing agreement under §
8 13-110 of this subtitle.

9 SUBTITLE 4. MARYLAND CONSTRUCTION QUALITY ASSURANCE ACT.
10 13-401.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) "COMPETITIVE BEST VALUE CONTRACTING" MEANS A METHOD OF
14 COMPETITIVE CONSTRUCTION CONTRACTING THAT:

15 (1) UTILIZES THE SOLICITATION OF COMPETITIVE SEALED PROPOSALS;
16 AND

17 (2) REQUIRES SYSTEMATIC REVIEW AND EVALUATION OF PRICE
18 PROPOSALS AND TECHNICAL PROPOSALS AND CONTRACTOR AND SUBCONTRACTOR
19 PERFORMANCE CAPABILITIES, INCLUDING PAST CONTRACT PERFORMANCE, FIRM
20 RESOURCES, AND TECHNICAL QUALIFICATIONS.

21 (C) "PROJECT STAFFING PLAN" MEANS A PLAN FOR:

22 (1) CRAFT TRAINING CAPABILITIES, INCLUDING THE ORGANIZATIONS
23 THAT PROVIDE THE TRAINING, THE TIME AND RESOURCES INVESTED IN THE
24 APPRENTICESHIP OR JOURNEYMAN TRAINING PROGRAMS, AND THE DEGREE OF
25 COMPLETION OF THE PROGRAMS; AND

26 (2) PROJECT STAFFING CAPABILITIES, INCLUDING THE FIRM'S SOURCES
27 FOR OBTAINING SKILLED CRAFT PERSONNEL AND THE FIRM'S ABILITY TO RECRUIT
28 AND RETAIN SUFFICIENT NUMBERS OF ADEQUATELY TRAINED AND QUALIFIED
29 CRAFT PERSONNEL.

30 (D) (1) "MANAGEMENT PLAN" MEANS A PLAN OF THE KEY PERSONNEL
31 PROPOSED FOR THE PROCUREMENT CONTRACT, QUALITY CONTROL PROGRAMS,
32 SAFETY PROGRAMS, AND MANAGEMENT TRAINING PROGRAMS.

33 (2) "MANAGEMENT PLAN" INCLUDES INFORMATION AND DATA ON THE
34 TECHNICAL APPROACH TO THE PROJECT, PROJECTIONS OF NEEDED EQUIPMENT,

1 MATERIALS, AND MANPOWER, AND PROPOSED PROJECT SCHEDULE AND PLAN FOR
2 MANAGING AND COORDINATING PROJECT VENDORS, SUPPLIERS, SUBCONTRACTORS,
3 AND PROFESSIONAL AND CRAFT PERSONNEL.

4 (E) "SUBCONTRACTING PLAN" MEANS THE OFFEROR'S SUBCONTRACTING
5 PLAN, INCLUDING THE MANAGEMENT PERSONNEL AND PROJECT STAFFING PLAN OF
6 PRELISTED SUBCONTRACTORS.

7 (F) "MBE" MEANS A MINORITY BUSINESS ENTERPRISE CERTIFIED BY THE
8 STATE UNDER § 14-301 OF THIS ARTICLE.

9 (G) (1) "NONPRICE EVALUATION FACTORS" MEANS FACTORS OTHER THAN
10 PRICE THAT MAY AFFECT THE SUCCESSFUL COMPLETION OF THE PROPOSED
11 PROCUREMENT CONTRACT AND THE ULTIMATE VALUE OF THE PROJECT TO THE
12 UNIT AND THE STATE.

13 (2) "NONPRICE EVALUATION FACTORS" INCLUDE FINANCIAL
14 RESOURCES, EXISTING WORKLOAD, FACILITIES AND EQUIPMENT, TECHNICAL
15 QUALIFICATIONS, PROPOSED PROJECT SCHEDULE, PROPOSED WARRANTIES,
16 TECHNICAL QUALIFICATIONS, FIRM RESOURCES, PROPOSED SUBCONTRACTORS,
17 CONTRACT SCHEDULE, LIFE-CYCLE COSTS, QUALITY CONTROL AND SAFETY
18 PROGRAMS, APPRENTICESHIP AND JOURNEYMAN CRAFT TRAINING PROGRAMS, AND
19 PROJECT STAFFING CAPABILITIES.

20 (H) "PAST CONTRACT PERFORMANCE" MEANS INFORMATION AND DATA ON:

21 (1) PRIOR PRICE PERFORMANCE ON PUBLIC OR PRIVATE PROJECTS FOR
22 THE PREVIOUS 5 YEARS; AND

23 (2) RELEVANT PERFORMANCE AREAS OF QUALITY OF WORKMANSHIP,
24 TIMELINESS OF PROJECT DELIVERY, ADEQUACY OF PROJECT STAFFING, SCHEDULE
25 COMPLIANCE, COST CONTROL, SAFETY PERFORMANCE, COMPLIANCE WITH
26 APPLICABLE LAWS AND REGULATIONS, BUSINESS INTEGRITY, COOPERATION AND
27 PROBLEM-SOLVING, AND OVERALL CUSTOMER SATISFACTION.

28 (I) "SUBCONTRACTING PLAN" MEANS AN OFFEROR'S SUBCONTRACTING PLAN
29 DESCRIBING MANAGEMENT PERSONNEL, CRAFT TRAINING CAPABILITIES, AND
30 PROJECT STAFFING CAPABILITIES OF PRELISTED SUBCONTRACTORS.

31 (J) "TECHNICAL PROPOSAL" MEANS A PROPOSAL CONTAINING INFORMATION
32 AND DATA REGARDING PAST PERFORMANCE, QUALIFICATIONS, AND CAPACITY OF
33 AN OFFEROR AND THE OFFEROR'S PRELISTED CONTRACTORS TO PERFORM A
34 PROCUREMENT CONTRACT.

35 13-402.

36 DUE TO THE INHERENT COMPLEXITIES AND UNIQUE DEMANDS OF
37 CONSTRUCTION CONTRACTING, INCLUDING THE NEED IN THE SOURCE SELECTION
38 PROCESS TO CAREFULLY CONSIDER AND EVALUATE CERTAIN NON-PRICE
39 PERFORMANCE FACTORS AND VALUE-ADDED CRITERIA, IT IS THE POLICY OF THE

1 STATE TO UTILIZE COMPETITIVE BEST VALUE CONTRACTING FOR CONSTRUCTION
2 PROCUREMENT CONTRACTS.

3 13-403.

4 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS
5 SUBTITLE SHALL APPLY TO A PROCUREMENT CONTRACT FOR CONSTRUCTION THAT
6 EXCEEDS \$500,000 BY A PRIMARY PROCUREMENT UNIT.

7 (B) THE HEAD OF A PRIMARY PROCUREMENT UNIT MAY DETERMINE IN
8 WRITING THAT THE NEED TO USE A METHOD OTHER THAN COMPETITIVE BEST
9 VALUE CONTRACTING IS SUFFICIENTLY COMPELLING TO OVERRIDE THE STRONG
10 PUBLIC POLICY THAT SUPPORTS THE NEED TO REGULARLY AND CONSISTENTLY
11 AWARD PROCUREMENT CONTRACTS FOR CONSTRUCTION UNDER THE COMPETITIVE
12 BEST VALUE CONTRACTING METHOD.

13 13-404.

14 (A) (1) WHEN A PROCUREMENT IS BASED ON COMPETITIVE BEST VALUE
15 CONTRACTING, A PRIMARY PROCUREMENT UNIT SHALL SEEK COMPETITIVE SEALED
16 PROPOSALS BY ISSUING A REQUEST FOR PROPOSALS UNDER THIS SECTION.

17 (2) A REQUEST FOR PROPOSALS SHALL INCLUDE:

18 (I) THE DATE, TIME, AND PLACE FOR SUBMITTING THE PROPOSAL;

19 (II) A STATEMENT REQUIRING AN OFFEROR TO SUBMIT A
20 SEPARATE PRICE PROPOSAL AND TECHNICAL PROPOSAL ACCORDING TO THE
21 FORMAT IN THE REQUEST FOR PROPOSALS;

22 (III) THE SCOPE OF THE PROCUREMENT CONTRACT;

23 (IV) IF AVAILABLE, THE SPECIFICATIONS OF THE PROCUREMENT
24 CONTRACT;

25 (V) THE FACTORS THAT WILL BE USED IN EVALUATING THE
26 PROPOSAL; AND

27 (VI) THE RELATIVE IMPORTANCE OF EACH EVALUATION FACTOR.

28 (B) A PRIMARY PROCUREMENT UNIT SHALL GIVE PUBLIC NOTICE OF A
29 REQUEST FOR PROPOSALS IN THE SAME MANNER AS REQUIRED FOR AN INVITATION
30 FOR COMPETITIVE SEALED BIDS UNDER § 13-103 OF THIS TITLE.

31 13-405.

32 (A) TO AVOID DETRIMENTAL EFFECTS TO A PRIMARY PROCUREMENT UNIT
33 THAT RESULTS FROM BID SHOPPING AND TO ENSURE EFFECTIVE BEST VALUE
34 SOURCE SELECTIONS, AN OFFEROR SHALL PRELIST THE OFFEROR'S
35 SUBCONTRACTORS.

1 (B) THE OFFEROR SHALL PRELIST A SUBCONTRACTOR WHO:

2 (1) HAS A SUBCONTRACT WITH THE OFFEROR THAT IS AT LEAST
3 \$500,000; AND

4 (2) IS A QUALIFIED, RESPONSIBLE CONTRACTOR.

5 (C) AN OFFEROR MAY NOT SUBSTITUTE A PRELISTED SUBCONTRACTOR
6 UNLESS:

7 (1) THE OFFEROR SUBMITS IN WRITING TO THE PRIMARY
8 PROCUREMENT UNIT COMPELLING, LEGITIMATE GROUNDS; AND

9 (2) THE PRIMARY PROCUREMENT UNIT PROVIDES EXPRESS WRITTEN
10 APPROVAL BEFORE COMMENCING WORK.

11 13-406.

12 (A) (1) A REQUEST FOR PROPOSALS SHALL INCLUDE THE FOLLOWING
13 EVALUATION FACTORS:

14 (I) PRICE;

15 (II) PAST PERFORMANCE;

16 (III) MANAGEMENT PLAN;

17 (IV) CRAFT PERSONNEL;

18 (V) SUBCONTRACTING PLAN; AND

19 (VI) THE USE OR PROPOSED USE OF MBE FIRMS.

20 (2) A REQUEST FOR PROPOSALS MAY INCLUDE NON-PRICE EVALUATION
21 FACTORS NOT LISTED UNDER SUBSECTION (A) OF THIS SECTION.

22 (B) IN EVALUATING AN OFFEROR'S PRICE PROPOSAL, A PRIMARY
23 PROCUREMENT UNIT SHALL CONSIDER:

24 (1) WHETHER THE PRICE OR PRICING SCHEME OFFERED IS
25 REASONABLE FOR THE SCOPE, PLANS, AND SPECIFICATIONS OF THE PROJECT; AND

26 (2) PRICE AS AN EVALUATION FACTOR EQUAL IN IMPORTANCE AND
27 WEIGHT TO ALL NONPRICE EVALUATION FACTORS.

28 (C) (1) IN EVALUATING THE QUALIFICATIONS, RELIABILITY, AND
29 PERFORMANCE CAPABILITIES OF AN OFFEROR AND THE OFFEROR'S PRELISTED
30 SUBCONTRACTORS, A PRIMARY PROCUREMENT UNIT SHALL CONSIDER THE PAST
31 CONTRACT PERFORMANCE, MANAGEMENT PLAN, PROJECT STAFFING PLAN, AND
32 SUBCONTRACTING PLAN OF THE OFFEROR AND THE OFFEROR'S PRELISTED
33 SUBCONTRACTORS.

1 (2) IF AN OFFEROR OR A PRELISTED SUBCONTRACTOR IS A NEW
2 BUSINESS AND DOES NOT HAVE A PERFORMANCE RECORD SUFFICIENT TO
3 EVALUATE THE OFFEROR OR PRELISTED SUBCONTRACTOR'S PAST CONTRACT
4 PERFORMANCE, A UNIT SHALL CONSIDER THE TECHNICAL QUALIFICATIONS AND
5 PAST CONTRACT PERFORMANCE OF THE FIRM'S OFFICERS, OWNERS, OR PARTNERS
6 AND THE PROPOSED MANAGEMENT TEAM FOR THE PROCUREMENT CONTRACT.

7 (3) A PRIMARY PROCUREMENT UNIT MAY DETERMINE THE IMPORTANCE
8 OR WEIGHT OF NONPRICE EVALUATION FACTORS.

9 13-407.

10 (A) A PROPOSAL SUBMITTED IN RESPONSE TO A REQUEST FOR COMPETITIVE
11 SEALED PROPOSALS UNDER § 13-404 OF THIS SUBTITLE SHALL BE EVALUATED BY AN
12 EVALUATION TEAM APPOINTED BY THE HEAD OF THE PRIMARY PROCUREMENT UNIT
13 OR THE PERSON'S DESIGNEE.

14 (B) AN EVALUATION TEAM SHALL CONSIST OF AT LEAST THREE PERSONS
15 QUALIFIED TO EVALUATE PROPOSALS FOR THE PROCUREMENT CONTRACT.

16 (C) THE HEAD OF THE PROCUREMENT UNIT MAY APPOINT:

17 (1) A SINGLE EVALUATION TEAM TO EVALUATE BOTH PRICE AND
18 TECHNICAL PROPOSALS; OR

19 (2) A SEPARATE EVALUATION TEAM FOR EACH TECHNICAL AND PRICE
20 PROPOSAL.

21 13-408.

22 (A) (1) PRICE PROPOSALS AND TECHNICAL PROPOSALS SHALL BE
23 REVIEWED AND EVALUATED INDEPENDENTLY.

24 (2) A PRICE PROPOSAL SHALL BE UNSEALED ONLY AFTER TECHNICAL
25 PROPOSALS FROM ALL OFFERORS HAVE BEEN COMPLETELY EVALUATED UNLESS
26 THE PRICE PROPOSAL AND TECHNICAL PROPOSAL ARE EVALUATED BY SEPARATE
27 EVALUATION TEAMS.

28 (B) WHEN EVALUATING A PROPOSAL, AN EVALUATION TEAM SHALL
29 CONSIDER ONLY THE FACTORS AND SUBFACTORS LISTED IN THE REQUEST FOR
30 PROPOSALS.

31 (C) WHEN EVALUATING A TECHNICAL PROPOSAL, AN EVALUATION TEAM
32 SHALL:

33 (1) OBTAIN RELEVANT INFORMATION AND DATA REGARDING AN
34 OFFEROR AND PRELISTED SUBCONTRACTORS, INCLUDING THE OFFEROR'S
35 TECHNICAL PROPOSAL, PUBLIC AND COMMERCIAL DATABASES, AND INPUT FROM
36 PRIOR CUSTOMERS;

1 (2) PREPARE A SUMMARY AND MATRIX OR QUANTITATIVE RANKING OF
2 EACH PROPOSAL ASSESSING EACH OFFEROR'S ABILITY TO SUCCESSFULLY PERFORM
3 THE CONTRACT; AND

4 (3) (I) PROVIDE A FINAL RATING OF EACH PROPOSAL THAT REFLECTS
5 THE CONSENSUS OF THE EVALUATION TEAM OR A FINAL SCORE THAT REFLECTS
6 THE AVERAGE OF THE SCORES OF THE MEMBERS OF THE EVALUATION TEAM; AND

7 (II) IF AN OFFEROR SUBCONTRACTS AT LEAST 20% OF A
8 PROCUREMENT CONTRACT FOR CONSTRUCTION TO A PRELISTED SUBCONTRACTOR,
9 PROVIDE A FINAL RATING OR SCORE ON A PRO RATA BASIS BASED ON THE
10 EVALUATION OF THE QUALIFICATIONS AND PAST PERFORMANCE OF THE
11 SUBCONTRACTOR.

12 (D) WHEN EVALUATING A PRICE PROPOSAL, AN EVALUATION MAY ASSIGN A
13 FINAL SCORE OR RATING.

14 (E) (1) THE FINAL RATINGS OR SCORES OF A TECHNICAL PROPOSAL AND A
15 PRICE PROPOSAL SHALL BE TRANSMITTED TO AND REVIEWED BY A PROCUREMENT
16 OFFICER DESIGNATED BY THE HEAD OF THE PRIMARY PROCUREMENT UNIT.

17 (2) AFTER COMPLETING AN EVALUATION OF ALL ELIGIBLE TECHNICAL
18 AND PRICE PROPOSALS AND THE FINDINGS OF AN EVALUATION TEAM, THE
19 DESIGNATED PROCUREMENT OFFICER SHALL MAKE A WRITTEN DETERMINATION OF
20 WHICH OFFEROR REPRESENTS THE BEST VALUE AND IS MOST ADVANTAGEOUS TO
21 THE PRIMARY PROCUREMENT UNIT AND THE STATE.

22 (3) THE WRITTEN DETERMINATION BY THE DESIGNATED
23 PROCUREMENT OFFICER SHALL INCLUDE:

24 (I) THE RATIONALE FOR THE DECISION; AND

25 (II) IF ANY, THE BUSINESS JUDGMENTS, PRICE AND
26 QUALIFICATION, OR TECHNICAL TRADE-OFFS MADE IN THE DECISION.

27 (4) THE HEAD OF THE PRIMARY PROCUREMENT UNIT SHALL REVIEW
28 AND APPROVE THE DETERMINATION OF THE DESIGNATED PROCUREMENT OFFICER.
29 13-409.

30 THE BOARD OF PUBLIC WORKS MAY ADOPT REGULATIONS NECESSARY TO
31 CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

32 13-410.

33 THIS SUBTITLE MAY BE CITED AS THE "MARYLAND CONSTRUCTION QUALITY
34 ASSURANCE ACT".

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2001.

