

BY: Conference Committee

AMENDMENTS TO HOUSE BILL NO. 252

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 12, strike “providing for” and substitute “requiring a procurement officer to protect”; in line 14, after “proposal;” insert “limiting the annual State expenditures under a contract based on an unsolicited proposal;”; in line 16, after “publications;” insert “requiring certain agencies to implement certain outreach programs;”; strike beginning with “of” in line 21 down through “Act” in line 23 and substitute “providing that a certain prohibition against assisting in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement does not include providing specifications for certain unsolicited proposal procurements;”; and in line 25, after “Assembly;” insert “defining certain terms;”.

On page 2, after line 10, insert:

“BY repealing and reenacting, with amendments,

Article - State Government

Section 15-508

Annotated Code of Maryland

(1999 Replacement Volume and 2001 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 27, insert:

“(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “BUSINESS AND ECONOMIC DEVELOPMENT SERVICES” MEANS SERVICES PROCURED BY THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

(Over)

(3) “EDUCATIONAL SERVICES” MEANS SERVICES PROCURED TO PROVIDE OR ASSIST IN PROVIDING TRAINING TO THIRD-PARTY CLIENTS UNDER A CONTRACT.

(4) “HEALTH OR SOCIAL SERVICES” MEANS SERVICES PROCURED TO PROVIDE OR ASSIST IN PROVIDING SUPPORT, CARE, OR SHELTER TO THIRD-PARTY CLIENTS UNDER A CONTRACT.

(B) A PROCUREMENT OFFICER MAY ENTER INTO A CONTRACT BASED ON AN UNSOLICITED PROPOSAL IF THE UNSOLICITED PROPOSAL:

(1) IS IN WRITING;

(2) (I) CONTAINS A NOVEL OR INNOVATIVE CONCEPT, APPLICATION, APPROACH, OR METHOD WHICH, TO THE KNOWLEDGE OF THE PROCUREMENT OFFICER, IS NOT USED BY OR AVAILABLE TO ANOTHER UNIT; OR

(II) DEMONSTRATES A NOVEL CAPABILITY OF THE OFFEROR OF THE PROPOSAL;

(3) HAS NOT BEEN PREVIOUSLY SUBMITTED TO THE UNIT BY ANOTHER PERSON;

(4) IS FOR THE DELIVERY OF:

(I) EDUCATIONAL SERVICES;

(II) HEALTH OR SOCIAL SERVICES; OR

(III) BUSINESS AND ECONOMIC DEVELOPMENT SERVICES; AND

(5) MEETS A NEED OF OR IS OTHERWISE ADVANTAGEOUS TO THE UNIT.

(C) (1) THERE IS AN INTERAGENCY PANEL CONSISTING OF REPRESENTATIVES APPOINTED BY THE GOVERNOR FROM THE FOLLOWING:

- (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;
- (II) THE DEPARTMENT OF HUMAN RESOURCES;
- (III) THE DEPARTMENT OF LABOR, LICENSING, AND
REGULATION;
- (IV) THE DEPARTMENT OF JUVENILE JUSTICE;
- (V) THE OFFICE FOR INDIVIDUALS WITH DISABILITIES;
- (VI) THE DEPARTMENT OF AGING;
- (VII) THE DEPARTMENT OF BUSINESS AND ECONOMIC
DEVELOPMENT; AND
- (VIII) THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY;

(2) (I) A PROCUREMENT OFFICER SHALL FORWARD AN UNSOLICITED PROPOSAL SUBMITTED UNDER THIS SECTION TO THE INTERAGENCY PANEL DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR REVIEW AND A DETERMINATION AS TO WHETHER THE UNSOLICITED PROPOSAL MEETS THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.

(II) THE INTERAGENCY PANEL SHALL MAKE A DETERMINATION AS TO WHETHER THE UNSOLICITED PROPOSAL MEETS THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION BY A MAJORITY VOTE OF THE PANEL:

1. AT A MEETING OF PANEL MEMBERS OR THEIR DESIGNEES;

2. BY A TELEPHONE POLL OF PANEL MEMBERS; OR
3. IN WRITING.

(III) IF THE INTERAGENCY PANEL DETERMINES THAT THE UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, THE PROCUREMENT OFFICER MAY NOT AWARD A PROCUREMENT CONTRACT BASED ON THE UNSOLICITED PROPOSAL.

(IV) 1. THE INTERAGENCY PANEL SHALL MAKE A DETERMINATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER RECEIVING THE UNSOLICITED PROPOSAL FOR REVIEW.

2. IF THE INTERAGENCY PANEL FAILS TO MAKE A DETERMINATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN THE 30-DAY PERIOD ESTABLISHED UNDER THIS SUBPARAGRAPH, THE UNSOLICITED PROPOSAL SHALL BE DEEMED TO HAVE BEEN DISAPPROVED BY THE INTERAGENCY PANEL.

(D) IF AN UNSOLICITED PROPOSAL MEETS THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, THE OFFEROR OF THE PROPOSAL IS NOT REQUIRED TO BE THE ONLY AVAILABLE SOURCE FOR THE CONTRACT AWARDED UNDER THIS SECTION.

(E) BEFORE AWARDING A PROCUREMENT CONTRACT UNDER THIS SECTION, A PROCUREMENT OFFICER SHALL OBTAIN:

- (1) THE APPROVAL OF THE HEAD OF THE UNIT; AND
- (2) ANY OTHER APPROVAL REQUIRED BY LAW.

(F) THE TERM, INCLUDING EXTENSIONS, OF A CONTRACT AWARDED UNDER THIS SECTION MAY NOT EXCEED 2 YEARS.

(G) STATE EXPENDITURES UNDER A CONTRACT AWARDED UNDER THIS SECTION MAY NOT EXCEED \$1,000,000 ANNUALLY.

(H) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A PROCUREMENT OFFICER SHALL TREAT THE INFORMATION CONTAINED IN AN UNSOLICITED PROPOSAL AS CONFIDENTIAL INFORMATION THAT IS NOT SUBJECT TO DISCLOSURE UNDER ANY OTHER STATE OR LOCAL LAW.

(2) IF A CONTRACT IS AWARDED UNDER THIS SECTION, DISCLOSURE OF THE UNSOLICITED PROPOSAL IS GOVERNED BY TITLE 10, SUBTITLE 6, PART III OF THE STATE GOVERNMENT ARTICLE.

(I) (1) NOT LESS THAN 30 DAYS BEFORE THE EXECUTION AND AWARD OF A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER THIS SECTION, THE CONTRACTING UNIT SHALL PUBLISH A GENERAL NOTICE OF THE INTENT TO AWARD THE CONTRACT IN:

(I) THE CONTRACT WEEKLY; AND

(II) AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN:

1. THE COUNTY OF THE AGENCY TO BE SERVED UNDER THE CONTRACT; AND

2. IF APPLICABLE, THE COUNTY OF THE CLIENT POPULATION TO BE SERVED BY THE AGENCY UNDER THE CONTRACT.

(2) FOR PURPOSES OF THIS SUBSECTION:

(I) THE BALTIMORE SUN AND THE WASHINGTON POST SHALL BE CONSIDERED NEWSPAPERS OF GENERAL CIRCULATION IN THE COUNTIES OF THE STATE; AND

(Over)

(II) IN BALTIMORE CITY, BALTIMORE COUNTY, AND ANNE ARUNDEL COUNTY, THE BALTIMORE AFRO-AMERICAN SHALL BE CONSIDERED A NEWSPAPER OF GENERAL CIRCULATION.

(3) IF, DURING THE 30-DAY PERIOD ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A PERSON PETITIONS THE INTERAGENCY PANEL FOR RECONSIDERATION OF A DETERMINATION OF APPROVAL UNDER SUBSECTION (B) OF THIS SECTION, THE INTERAGENCY PANEL SHALL RECONSIDER THE DETERMINATION OF APPROVAL AND MAKE WRITTEN FINDINGS AFFIRMING OR REVERSING THE DETERMINATION OF APPROVAL.

(J) IN ADDITION TO PUBLISHING NOTICE OF THE INTENT TO AWARD A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER SUBSECTION (I) OF THIS SECTION, NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, A UNIT SHALL PUBLISH NOTICE OF THE AWARD IN THE CONTRACT WEEKLY.

(K) THE FOLLOWING AGENCIES SHALL IMPLEMENT AN EDUCATIONAL OUTREACH CAMPAIGN ON THE AVAILABILITY OF THE UNSOLICITED PROPOSAL METHOD OF PROCUREMENT:

- (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;
- (2) THE DEPARTMENT OF HUMAN RESOURCES;
- (3) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;
- (4) THE DEPARTMENT OF JUVENILE JUSTICE;
- (5) THE OFFICE FOR INDIVIDUALS WITH DISABILITIES;
- (6) THE DEPARTMENT OF AGING; AND

(7) THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT.

Article - State Government

15-508.

(a) An individual or a person that employs 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 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 agency or provided on an unsolicited basis;

(2) submitting written comments on a specification prepared by an agency 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; [or]

(4) providing architectural and engineering services for programming, master planning, or other project planning services; OR

(5) PROVIDING SPECIFICATIONS FOR AN UNSOLICITED PROPOSAL PROCUREMENT MADE IN ACCORDANCE WITH § 13-107.1 OF THE STATE FINANCE AND

(Over)

PROCUREMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30 of each year the Department of Budget and Management shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee and the House Commerce and Government Matters Committee, on the impact of this Act, including for the previous fiscal year:

- (1) the number of unsolicited proposals awarded by each contracting unit;
- (2) the monetary amounts of the contracts awarded under this Act;
- (3) the goods or services for which contracts were awarded under this Act; and
- (4) the number of contract awardees under this Act who were certified minority business enterprises.”.

On pages 2 through 6, strike in their entirety the lines beginning with line 28 on page 2 down through line 28 on page 6.