

BY: Commerce and Government Matters Committee

AMENDMENTS TO SENATE BILL NO. 719

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “establishing” in line 5 down through “procurement” in line 21 and substitute “exempting certain unsolicited proposals from a certain requirement that procurement be by competitive sealed bid; establishing an interagency panel to review unsolicited proposals and to make certain determinations subject to certain requirements and procedures; providing for the effect of certain action or inaction by the interagency panel; establishing that a qualifying unsolicited proposal is not required to be a sole source contract; requiring a procurement officer to obtain certain approval before awarding a contract in response to an unsolicited proposal; providing for the confidentiality of information contained in an unsolicited proposal; limiting the term of a contract based on an unsolicited proposal; requiring each contracting unit to publish notice of intent to award, and notice of award of, an unsolicited proposal in certain publications; providing for certain reconsideration by the interagency panel of approval of an unsolicited proposal; providing that a certain provision of the Maryland Public Ethics Law does not apply to certain persons submitting unsolicited proposals under this Act; providing for the effects of certain provisions of this Act; requiring the Department of Budget and Management to report annually on the impact of this Act to the Governor and certain committees of the General Assembly; providing for the application of this Act; providing for the termination of this Act; and generally relating to unsolicited”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 6 through 10, inclusive.

AMENDMENT NO. 3

On pages 2 through 6, strike in their entirety the lines beginning with line 28 on page 2 through line 8 on page 6, inclusive, and substitute:

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

(Over)

(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; AND

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

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

(I) THE UNIVERSITY SYSTEM OF MARYLAND;

(II) THE DEPARTMENT OF GENERAL SERVICES;

(III) THE DEPARTMENT OF TRANSPORTATION;

(IV) THE DEPARTMENT OF BUDGET AND MANAGEMENT;

(V) THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY; AND

(VI) THE PROCURING AGENCY INVOLVED IN THE PROCUREMENT MATTER SUBMITTED TO THE INTERAGENCY PANEL UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(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 (A) OF THIS SECTION.

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

DESIGNEES:

1. AT A MEETING OF PANEL MEMBERS OR THEIR

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 (A) 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.

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

(Over)

(D) 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.

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

(F) (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.

(G) (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 ALL COUNTIES OF THE STATE; AND

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

(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.

(H) IN ADDITION TO PUBLISHING NOTICE OF THE INTENT TO AWARD A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER SUBSECTION (G) 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.

(I) THE PROVISIONS OF § 15-508(A) OF THE STATE GOVERNMENT ARTICLE DO NOT APPLY TO A PERSON WHO SUBMITS AN UNSOLICITED PROPOSAL UNDER THIS SECTION WITH RESPECT TO THE DRAFTING OF SPECIFICATIONS OR ANY OTHER MATTER PERTAINING TO THE UNSOLICITED PROPOSAL.

(J) THIS SECTION DOES NOT:

(Over)

(1) ALTER ANY REQUIREMENTS OR PROCEDURES ESTABLISHED BY LAW RELATING TO PROCUREMENT FROM MINORITY BUSINESS ENTERPRISES; OR

(2) AFFECT THE AUTHORITY OF THE BOARD TO:

(I) DELEGATE ITS AUTHORITY UNDER § 12-101(B)(4) OF THIS ARTICLE; OR

(II) ADOPT REGULATIONS TO ALLOW A UNIT OF STATE GOVERNMENT TO ENTER INTO A CONTRACT WITHOUT BOARD APPROVAL UNDER § 12-203(A) OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30 of each year, the Department of Budget and Management shall generate, from the State's electronic financial management information system, a report on the impact of this Act. The report shall be provided 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. The report shall include, for the previous fiscal year:

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only to an unsolicited proposal offered on or after the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002. It shall remain effective for a period of 6 years and, at the end of September 30, 2008, with no further action required by the General Assembly, this Act shall be abrogated and of no further force

and effect.”.