
By: **Delegates Wood and McIntosh**
Introduced and read first time: January 22, 2002
Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 19, 2002

CHAPTER _____

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 that meets certain
5 requirements; exempting certain unsolicited proposals from a certain
6 requirement that procurement be by competitive sealed bid; establishing an
7 interagency panel to review unsolicited proposals and to make certain
8 determinations subject to certain requirements and procedures; providing for
9 the effect of certain action or inaction by the interagency panel; establishing
10 that a qualifying unsolicited proposal is not required to be a sole source contract;
11 requiring a procurement officer to obtain certain approval before awarding a
12 contract in response to an unsolicited proposal; providing for the confidentiality
13 of information contained in an unsolicited proposal; limiting the term of a
14 contract based on an unsolicited proposal; requiring each contracting unit to
15 publish notice of intent to award, and notice of award of, an unsolicited proposal
16 in certain publications; ~~requiring each contracting unit to publish quarterly a~~
17 ~~notice encouraging certain unsolicited proposals in newspapers of general~~
18 ~~circulation of the State; requiring each contracting unit to report annually on~~
19 ~~the impact of this Act to the Department of Budget and Management providing~~
20 for certain reconsideration by the interagency panel of approval of an unsolicited
21 proposal; providing that a certain provision of the Maryland Public Ethics Law
22 does not apply to certain persons submitting unsolicited proposals under this
23 Act; providing for the effects of certain provisions of this Act; requiring the
24 Department of Budget and Management to report annually on the impact of this
25 Act to the Governor and certain committees of the General Assembly; providing
26 for the application of this Act; providing for the termination of this Act; and
27 generally relating to unsolicited proposals.

1 BY repealing and reenacting, with amendments,
 2 Article - State Finance and Procurement
 3 Section 13-102(a)
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume)

6 BY adding to
 7 Article - State Finance and Procurement
 8 Section 13-107.1
 9 Annotated Code of Maryland
 10 (2001 Replacement Volume)

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

13 **Article - State Finance and Procurement**

14 13-102.

15 (a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all
 16 procurement by units shall be by competitive sealed bids unless one of the following
 17 methods specifically is authorized:

18 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
 19 subtitle;

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

21 (3) sole source procurement under § 13-107 of this subtitle;

22 (4) emergency or expedited procurement under § 13-108 of this subtitle;

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

24 (6) an intergovernmental cooperative purchasing agreement under §
 25 13-110 of this subtitle; OR

26 (7) AN UNSOLICITED PROPOSAL UNDER § 13-107.1 OF THIS SUBTITLE.

27 13-107.1.

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

30 (1) IS IN WRITING;

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

- 1 (II) DEMONSTRATES A NOVEL CAPABILITY OF THE ~~OFFERER~~
2 OFFEROR OF THE PROPOSAL;
- 3 (3) HAS NOT BEEN PREVIOUSLY SUBMITTED TO THE UNIT BY ANOTHER
4 PERSON; AND
- 5 (4) MEETS A NEED OF OR IS OTHERWISE ADVANTAGEOUS TO THE UNIT.

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

- 8 (I) THE UNIVERSITY SYSTEM OF MARYLAND;
- 9 (II) THE DEPARTMENT OF GENERAL SERVICES;
- 10 (III) THE DEPARTMENT OF TRANSPORTATION;
- 11 (IV) THE DEPARTMENT OF BUDGET AND MANAGEMENT;
- 12 (V) THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY; AND
- 13 (VI) THE PROCURING AGENCY INVOLVED IN THE PROCUREMENT
14 MATTER SUBMITTED TO THE INTERAGENCY PANEL UNDER PARAGRAPH (2) OF THIS
15 SUBSECTION.

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

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

- 24 1. AT A MEETING OF PANEL MEMBERS OR THEIR
25 DESIGNEES;
- 26 2. BY A TELEPHONE POLL OF PANEL MEMBERS; OR
- 27 3. IN WRITING.

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

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

1 2. IF THE INTERAGENCY PANEL FAILS TO MAKE A
2 DETERMINATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN THE
3 30-DAY PERIOD ESTABLISHED UNDER THIS SUBPARAGRAPH, THE UNSOLICITED
4 PROPOSAL SHALL BE DEEMED TO HAVE BEEN DISAPPROVED BY THE INTERAGENCY
5 PANEL.

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

10 ~~(C)~~ (D) BEFORE AWARDING A PROCUREMENT CONTRACT UNDER THIS
11 SECTION, A PROCUREMENT OFFICER SHALL OBTAIN:

12 (1) THE APPROVAL OF THE HEAD OF THE UNIT; AND

13 (2) ANY OTHER APPROVAL REQUIRED BY LAW.

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

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

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

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

27 ~~(+)~~ (I) THE CONTRACT WEEKLY; AND

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

29 ~~(+)~~ 1. THE COUNTY OF THE AGENCY TO BE SERVED UNDER THE
30 CONTRACT; AND

31 ~~(+)~~ 2. IF APPLICABLE, THE COUNTY OF THE CLIENT
32 POPULATION TO BE SERVED BY THE AGENCY UNDER THE CONTRACT.

33 (2) FOR PURPOSES OF THIS SUBSECTION:

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

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

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

10 (G) ~~(1) AT LEAST QUARTERLY, EACH CONTRACTING UNIT SHALL PUBLISH~~
11 ~~NOTICE, WHICH NOTICE ENCOURAGES SMALL BUSINESS PERSONS TO OFFER~~
12 ~~UNSOLICITED PROPOSALS, IN AT LEAST ONE NEWSPAPER OF GENERAL~~
13 ~~CIRCULATION IN:~~

14 ~~(I) THE COUNTY OF THE AGENCY TO BE SERVED UNDER THE~~
15 ~~CONTRACT; AND~~

16 ~~(II) IF APPLICABLE, THE COUNTY OF THE CLIENT POPULATION TO~~
17 ~~BE SERVED BY THE AGENCY UNDER THE CONTRACT.~~

18 ~~(2) FOR PURPOSES OF THIS SUBSECTION:~~

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

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

25 (H) IN ADDITION TO PUBLISHING NOTICE OF THE INTENT TO AWARD A
26 CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNDER SUBSECTION ~~(F)~~ (G) OF
27 THIS SECTION, NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF
28 A PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, A UNIT SHALL
29 PUBLISH NOTICE OF THE AWARD IN THE CONTRACT WEEKLY.

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

34 (J) THIS SECTION DOES NOT:

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

37 (2) AFFECT THE AUTHORITY OF THE BOARD TO:

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

3 (II) ADOPT REGULATIONS TO ALLOW A UNIT OF STATE
 4 GOVERNMENT TO ENTER INTO A CONTRACT WITHOUT BOARD APPROVAL UNDER §
 5 12-203(A) OF THIS ARTICLE.

6 SECTION 2. AND BE IT FURTHER ENACTED, That on or before ~~June 30~~ of
 7 ~~each year each contracting unit shall report to the Department of Budget and~~
 8 ~~Management, and on or before September 30 of each year the Department shall~~
 9 ~~report September 30 of each year, the Department of Budget and Management shall~~
 10 generate, from the State's electronic financial management information system, a
 11 report on the impact of this Act. The report shall be provided to the Governor and, in
 12 accordance with § 2-1246 of the State Government Article, the Senate Education,
 13 Health, and Environmental Affairs Committee and the House Commerce and
 14 Government Matters Committee, on the impact of this Act, including The report shall
 15 include, for the previous fiscal year:

16 (1) the number of unsolicited proposals ~~received~~ awarded by each
 17 contracting unit;

18 (2) ~~a description of the unsolicited proposals received by each contracting~~
 19 ~~unit;~~

20 (3) ~~the number of persons offering an unsolicited proposal who were~~
 21 ~~awarded a contract under this section;~~

22 (4) ~~the size and characteristics of the persons offering unsolicited~~
 23 ~~proposals and the persons awarded a contract under this section;~~

24 (2) the goods or services for which contracts were awarded under this
 25 Act;

26 (3) the monetary amounts of the contracts awarded under this Act; and

27 (4) the number of contract awardees under this Act that were certified
 28 minority business enterprises.

29 (5) ~~the monetary amounts of the contracts awarded under this section;~~

30 (6) ~~the goods or services for which contracts were awarded under this~~
 31 ~~section; and~~

32 (7) ~~a description of the activities in which each contracting unit engaged~~
 33 ~~to attract and encourage minority business enterprises to offer unsolicited proposals.~~

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

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