

SENATE BILL 719

Unofficial Copy
P2

2002 Regular Session
2r1669
CF 2r1297

By: **Senators Hollinger, Stone, Collins, Frosh, and Harris**
Introduced and read first time: February 1, 2002
Assigned to: Education, Health, and Environmental Affairs

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 that meets certain
5 requirements; establishing that a qualifying unsolicited proposal is not required
6 to be a sole source contract; requiring a procurement officer to obtain certain
7 approval before awarding a contract in response to an unsolicited proposal;
8 requiring a procurement officer to protect the confidentiality of information
9 contained in an unsolicited proposal; limiting the term of a contract based on an
10 unsolicited proposal; requiring each contracting unit to publish notice of intent
11 to award, and notice of award of, an unsolicited proposal in certain publications;
12 requiring certain agencies to implement certain outreach programs; requiring
13 the Department of Budget and Management to report annually on the impact of
14 this Act to the Governor and certain committees of the General Assembly;
15 defining certain terms; providing for the application of this Act; providing for the
16 termination of this Act; and generally relating to unsolicited procurement
17 proposals.

18 BY repealing and reenacting, with amendments,
19 Article - State Finance and Procurement
20 Section 13-102(a)
21 Annotated Code of Maryland
22 (2001 Replacement Volume)

23 BY adding to
24 Article - State Finance and Procurement
25 Section 13-107.1
26 Annotated Code of Maryland
27 (2001 Replacement Volume)

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

1 **Article - State Finance and Procurement**

2 13-102.

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

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

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

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

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

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

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

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

15 13-107.1.

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

18 (2) "EDUCATIONAL SERVICES" MEANS SERVICES PROCURED TO
19 PROVIDE TRAINING DIRECTLY TO THIRD-PARTY CLIENTS UNDER A CONTRACT THE
20 PRIMARY PURPOSE OF WHICH IS THE DIRECT PROVISION OF THESE SERVICES.

21 (3) "HEALTH OR SOCIAL SERVICES" MEANS SERVICES PROCURED TO
22 PROVIDE SUPPORT, CARE, OR SHELTER DIRECTLY TO THIRD-PARTY CLIENTS UNDER
23 A CONTRACT THE PRIMARY PURPOSE OF WHICH IS THE DIRECT PROVISION OF THESE
24 SERVICES.

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

27 (1) IS IN WRITING;

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

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

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

3 (4) IS FOR THE DELIVERY OF EDUCATIONAL SERVICES OR HEALTH OR
4 SOCIAL SERVICES; AND

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

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

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

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

13 (2) ANY OTHER APPROVAL REQUIRED BY LAW.

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

16 (F) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,
17 A PROCUREMENT OFFICER SHALL TREAT THE INFORMATION CONTAINED IN AN
18 UNSOLICITED PROPOSAL AS CONFIDENTIAL INFORMATION THAT IS NOT SUBJECT TO
19 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 (G) (1) NOT LESS THAN 30 DAYS BEFORE THE EXECUTION AND AWARD OF A
24 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:

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

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

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

12 (I) THE FOLLOWING AGENCIES SHALL IMPLEMENT AN EDUCATIONAL
13 OUTREACH CAMPAIGN ON THE AVAILABILITY OF THE UNSOLICITED PROPOSAL
14 METHOD OF PROCUREMENT:

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That on or before September
22 30 of each year the Department of Budget and Management shall report to the
23 Governor and, in accordance with § 2-1246 of the State Government Article, the
24 Senate Education, Health, and Environmental Affairs Committee and the House
25 Commerce and Government Matters Committee, on the impact of this Act, including
26 for the previous fiscal year:

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

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

34 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2002. It shall remain effective for a period of 6 years and, at the end of

- 1 September 30, 2008, with no further action required by the General Assembly, this
- 2 Act shall be abrogated and of no further force and effect.