

SENATE BILL 719

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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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 21, 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; 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; limiting the annual State expenditures under a contract
11 based on an unsolicited proposal; requiring each contracting unit to publish
12 notice of intent to award, and notice of award of, an unsolicited proposal in
13 certain publications; requiring certain agencies to implement certain outreach
14 programs; providing that a certain prohibition against assisting in the drafting
15 of specifications, an invitation for bids, or a request for proposals for a
16 procurement does not include providing specifications for certain unsolicited
17 proposal procurements; requiring the Department of Budget and Management
18 to report annually on the impact of this Act to the Governor and certain
19 committees of the General Assembly; defining certain terms; providing for the
20 application of this Act; providing for the termination of this Act; and generally
21 relating to unsolicited procurement proposals.

22 BY repealing and reenacting, with amendments,
23 Article - State Finance and Procurement
24 Section 13-102(a)
25 Annotated Code of Maryland
26 (2001 Replacement Volume)

1 BY adding to
 2 Article - State Finance and Procurement
 3 Section 13-107.1
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume)

6 BY repealing and reenacting, with amendments,
 7 Article - State Government
 8 Section 15-508
 9 Annotated Code of Maryland
 10 (1999 Replacement Volume and 2001 Supplement)

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

30 (2) "EDUCATIONAL SERVICES" MEANS SERVICES PROCURED TO
 31 PROVIDE ~~OR ASSIST IN PROVIDING~~ TRAINING ~~DIRECTLY~~ TO THIRD-PARTY CLIENTS
 32 UNDER A CONTRACT ~~THE PRIMARY PURPOSE OF WHICH IS THE DIRECT PROVISION~~
 33 ~~OF THESE SERVICES.~~

1 (3) "HEALTH OR SOCIAL SERVICES" MEANS SERVICES PROCURED TO
2 PROVIDE OR ASSIST IN PROVIDING SUPPORT, CARE, OR SHELTER ~~DIRECTLY~~ TO
3 THIRD-PARTY CLIENTS UNDER A CONTRACT ~~THE PRIMARY PURPOSE OF WHICH IS~~
4 ~~THE DIRECT PROVISION OF THESE SERVICES.~~

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

7 (1) IS IN WRITING;

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

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

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

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

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

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

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

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

25 (2) ANY OTHER APPROVAL REQUIRED BY LAW.

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

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

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

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

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

5 (I) THE CONTRACT WEEKLY; AND

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

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

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

11 (2) FOR PURPOSES OF THIS SUBSECTION:

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

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

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

23 ~~(I)~~ (J) THE FOLLOWING AGENCIES SHALL IMPLEMENT AN EDUCATIONAL
24 OUTREACH CAMPAIGN ON THE AVAILABILITY OF THE UNSOLICITED PROPOSAL
25 METHOD OF PROCUREMENT:

26 (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

27 (2) THE DEPARTMENT OF HUMAN RESOURCES;

28 (3) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION;

29 (4) THE DEPARTMENT OF JUVENILE JUSTICE;

30 (5) THE OFFICE FOR INDIVIDUALS WITH DISABILITIES; AND

31 (6) THE DEPARTMENT OF AGING.

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Article - State Government2 15-508.

3 (a) An individual or a person that employs an individual who assists an
4 executive unit in the drafting of specifications, an invitation for bids, a request for
5 proposals for a procurement, or the selection or award made in response to an
6 invitation for bids or request for proposals may not:

7 (1) submit a bid or proposal for that procurement; or

8 (2) assist or represent another person, directly or indirectly, who is
9 submitting a bid or proposal for that procurement.

10 (b) For purposes of subsection (a) of this section, assisting in the drafting of
11 specifications, an invitation for bids, or a request for proposals for a procurement does
12 not include:

13 (1) providing descriptive literature such as catalogue sheets, brochures,
14 technical data sheets, or standard specification "samples", whether requested by an
15 executive agency or provided on an unsolicited basis;

16 (2) submitting written comments on a specification prepared by an
17 agency or on a solicitation for a bid or proposal when comments are solicited from two
18 or more persons as part of a request for information or a prebid or preproposal
19 process;

20 (3) providing specifications for a sole source procurement made in
21 accordance with § 13-107 of the State Finance and Procurement Article; [or]

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

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That on or before September
28 30 of each year the Department of Budget and Management shall report to the
29 Governor and, in accordance with § 2-1246 of the State Government Article, the
30 Senate Education, Health, and Environmental Affairs Committee and the House
31 Commerce and Government Matters Committee, on the impact of this Act, including
32 for the previous fiscal year:

33 (1) the number of unsolicited proposals awarded by each contracting unit;

34 (2) the monetary amounts of the contracts awarded under this Act;

35 (3) the goods or services for which contracts were awarded under this Act; and

1 (4) the number of contract awardees under this Act who were certified
2 minority business enterprises.

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

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