

SENATE BILL 238

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HB 480/02 - CGM

2003 Regular Session
3r1549
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By: **Senator Stone**

Introduced and read first time: January 29, 2003

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Construction Contracts - Maryland Construction Quality**
3 **Assurance Act**

4 FOR the purpose of authorizing the best value contracting method of procurement for
5 certain construction contracts; requiring a best value request for proposals to
6 contain certain information; requiring proposals submitted in response to a best
7 value request for proposals to contain certain information, including information
8 pertaining to certain required prelisted subcontractors; requiring proposals
9 submitted in response to a best value request for proposals to be evaluated in a
10 certain manner by certain evaluation teams; providing the legislative intent and
11 scope of this Act; defining certain terms; requiring the adoption of certain
12 regulations; establishing that this Act is to be known as the Maryland
13 Construction Quality Assurance Act; and generally relating to the Maryland
14 Construction Quality Assurance Act.

15 BY repealing and reenacting, with amendments,
16 Article - State Finance and Procurement
17 Section 13-102
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2002 Supplement)

20 BY adding to
21 Article - State Finance and Procurement
22 Section 13-501 through 13-510, inclusive, to be under the new subtitle "Subtitle
23 5. Maryland Construction Quality Assurance Act"
24 Annotated Code of Maryland
25 (2001 Replacement Volume and 2002 Supplement)

26 Preamble

27 WHEREAS, The purpose of the Construction Quality Assurance Act is to
28 authorize competitive best value contracting for certain public construction contracts
29 in order to provide State procurement units with an effective policy for improving
30 construction project delivery; and

1 WHEREAS, Extensive experience with this procurement method by federal
2 government agencies, the Maryland Stadium Authority, and local contracting
3 agencies demonstrates that competitive best value contracting provides substantial
4 benefits for State agencies, the contracting community, and taxpayers; and

5 WHEREAS, By permitting State contracting agencies to consider and evaluate
6 important performance and qualification factors, best value contracting enables
7 procurement units to improve quality and cost-efficiency and obtain better overall
8 value in State construction contracts; and

9 WHEREAS, Evaluation of key qualification factors, including past performance,
10 management capabilities and project staffing, can assist contracting agencies in
11 achieving the most advantageous results for the State, while promoting greater
12 accountability among the contractors and subcontractors who benefit from public
13 works projects; and

14 WHEREAS, Competitive best value contracting gives procurement units an
15 effective tool for promoting the use of minority-owned businesses, woman-owned
16 businesses and small businesses in Maryland, important public policy goals
17 established by Title 14, Subtitle 3 of the State Finance and Procurement Article; and

18 WHEREAS, Use of the competitive best value method encourages construction
19 firms to maintain high performance operations by promoting investments in areas
20 such as apprenticeship training, quality control, and safety, and such investments
21 benefit State projects and the contracting community; and

22 WHEREAS, Future public works contracts for the State will be used to renovate
23 and expand Maryland's infrastructure system and procurement units responsible for
24 administering these vital contracts must have access to the most effective
25 procurement methods available to obtain the best results for the State; now,
26 therefore,

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

29 **Article - State Finance and Procurement**

30 13-102.

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

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

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

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

- 1 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 2 (5) small procurement under § 13-109 of this subtitle;
- 3 (6) an intergovernmental cooperative purchasing agreement under §
4 13-110 of this subtitle;
- 5 (7) auction bids under § 13-111 of this subtitle; or
- 6 (8) an unsolicited proposal under § 13-107.1 of this subtitle.

7 (b) (1) In awarding a procurement contract for human, social, cultural, or
8 educational service, the preferred method is by competitive sealed proposals under §
9 13-104 of this subtitle.

10 (2) In awarding a procurement contract for a lease of real property, the
11 preferred method is by competitive sealed proposals under § 13-105 of this subtitle.

12 (3) Procurement under an intergovernmental cooperative purchasing
13 agreement is appropriate in situations where the State is expected to achieve a better
14 price as the result of economies of scale or to otherwise benefit by purchasing in
15 cooperation with another governmental entity.

16 SUBTITLE 5. MARYLAND CONSTRUCTION QUALITY ASSURANCE ACT.

17 13-501.

18 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) "COMPETITIVE BEST VALUE CONTRACTING" MEANS A METHOD OF
21 PROCUREMENT THAT:

22 (1) UTILIZES THE SOLICITATION OF COMPETITIVE SEALED PROPOSALS;
23 AND

24 (2) REQUIRES THE EVALUATION OF PRICE PROPOSALS AND TECHNICAL
25 PROPOSALS TO MAKE CONTRACT AWARDS THAT REPRESENT THE BEST VALUE TO
26 THE PROCUREMENT UNIT AND THE STATE.

27 (C) "MANAGEMENT PLAN" MEANS A PLAN FOR MANAGING THE
28 CONSTRUCTION CONTRACT WHICH DEMONSTRATES THE OFFEROR'S TECHNICAL
29 QUALIFICATIONS AND COMPETENCY FOR THE PROJECT AND INCLUDES:

- 30 (1) KEY MANAGEMENT PERSONNEL PROPOSED FOR THE PROJECT;
- 31 (2) PROPOSED PROJECT SCHEDULE;
- 32 (3) QUALITY CONTROL PROGRAMS; AND
- 33 (4) SAFETY PROGRAMS.

1 (D) "MBE" MEANS A MINORITY BUSINESS ENTERPRISE CERTIFIED BY THE
2 STATE UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE.

3 (E) "PAST PERFORMANCE" MEANS INFORMATION AND DATA ON A
4 CONTRACTOR OR SUBCONTRACTOR'S PERFORMANCE ON CONSTRUCTION PROJECTS
5 SIMILAR IN SIZE AND SCOPE TO THE PROCUREMENT CONTRACT FOR THE PAST 3
6 YEARS AND INCLUDES THE DEGREE TO WHICH THE CONTRACTOR OR
7 SUBCONTRACTOR:

8 (1) COMPLETED PROJECTS SAFELY, ON TIME AND ON BUDGET;

9 (2) COMPLIED WITH PROJECT PLANS AND SPECIFICATIONS;

10 (3) FULFILLED CONTRACTING GOALS ESTABLISHED BY TITLE 14,
11 SUBTITLE 3 OF THIS ARTICLE; AND

12 (4) COMPLIED WITH APPLICABLE LAWS AND REGULATIONS.

13 (F) "PROJECT STAFFING PLAN" MEANS A PLAN DEMONSTRATING A
14 CONTRACTOR'S OR SUBCONTRACTOR'S CAPABILITY TO RECRUIT AND RETAIN
15 SUFFICIENT NUMBERS OF QUALIFIED CONSTRUCTION CRAFT PERSONNEL FOR THE
16 PROCUREMENT PROJECT AND SHALL INCLUDE:

17 (1) SOURCES TO BE USED BY THE CONTRACTOR OR SUBCONTRACTOR
18 FOR OBTAINING CRAFT PERSONNEL;

19 (2) TYPES OF TRAINING PROVIDED BY THE CONTRACTOR OR
20 SUBCONTRACTOR;

21 (3) IDENTIFICATION OF TRAINING PROVIDERS;

22 (4) THE DEGREE TO WHICH APPRENTICESHIP TRAINING PROGRAMS
23 REGISTERED WITH THE U.S. DEPARTMENT OF LABOR OR STATE APPRENTICESHIP
24 COUNCIL ARE USED; AND

25 (5) THE AMOUNT OF TIME AND RESOURCES INVESTED IN
26 APPRENTICESHIP PROGRAMS AND OTHER CRAFT TRAINING PROGRAMS.

27 (G) "TECHNICAL EVALUATION CRITERIA" MEANS PAST PERFORMANCE,
28 MANAGEMENT PLAN, PROJECT STAFFING PLAN, PROPOSED PLAN FOR MEETING THE
29 CONTRACTING GOALS ESTABLISHED BY TITLE 14, SUBTITLE 3 OF THIS ARTICLE, OR
30 OTHER TECHNICAL CRITERIA LISTED IN THE REQUEST FOR PROPOSALS ISSUED
31 UNDER THIS SUBTITLE.

32 (H) "TECHNICAL PROPOSAL" MEANS A PROPOSAL CONTAINING INFORMATION
33 AND DATA REGARDING THE TECHNICAL EVALUATION CRITERIA OF AN OFFEROR AND
34 THE OFFEROR'S PRELISTED SUBCONTRACTORS FOR THE PROCUREMENT CONTRACT.

1 13-502.

2 DUE TO THE INHERENT COMPLEXITIES AND UNIQUE DEMANDS OF
3 CONSTRUCTION CONTRACTING, INCLUDING THE NEED IN THE CONTRACTOR
4 SELECTION PROCESS TO CAREFULLY CONSIDER AND EVALUATE CERTAIN
5 PERFORMANCE AND QUALIFICATION FACTORS, IT IS THE POLICY OF THE STATE TO
6 UTILIZE COMPETITIVE BEST VALUE CONTRACTING FOR CONSTRUCTION
7 PROCUREMENT CONTRACTS TO THE GREATEST EXTENT POSSIBLE.

8 13-503.

9 A PRIMARY PROCUREMENT UNIT MAY UTILIZE THE COMPETITIVE BEST VALUE
10 CONTRACTING METHOD FOR CONSTRUCTION CONTRACTS VALUED AT \$2,500,000 OR
11 MORE.

12 13-504.

13 (A) WHEN A PROCUREMENT IS BASED ON COMPETITIVE BEST VALUE
14 CONTRACTING, A PRIMARY PROCUREMENT UNIT SHALL SEEK COMPETITIVE SEALED
15 PROPOSALS BY ISSUING A REQUEST FOR PROPOSALS UNDER THIS SECTION.

16 (B) A REQUEST FOR PROPOSALS UNDER THIS SECTION SHALL INCLUDE:

17 (1) THE DATE, TIME, AND PLACE FOR SUBMITTING THE PROPOSAL;

18 (2) A STATEMENT REQUIRING AN OFFEROR TO SUBMIT A SEPARATE
19 PRICE PROPOSAL AND TECHNICAL PROPOSAL ACCORDING TO THE FORMAT SET
20 FORTH IN THE REQUEST FOR PROPOSALS;

21 (3) THE PROJECT SPECIFICATIONS; AND

22 (4) EXCEPT AS PROVIDED IN § 13-505 OF THIS ARTICLE, THE FOLLOWING
23 PRICE AND TECHNICAL EVALUATION CRITERIA AND THEIR RESPECTIVE WEIGHTS
24 FOR EVALUATION PURPOSES:

25 (I) PRICE - 70%;

26 (II) PAST PERFORMANCE - 13%;

27 (III) MANAGEMENT PLAN - 5%;

28 (IV) PROJECT STAFFING PLAN - 5%; AND

29 (V) FULFILLMENT OF CONTRACTING GOALS ESTABLISHED BY
30 TITLE 14, SUBTITLE 3 OF THIS ARTICLE - 7%.

31 (C) A PRIMARY PROCUREMENT UNIT SHALL GIVE PUBLIC NOTICE OF A
32 REQUEST FOR PROPOSALS UNDER THIS SECTION IN THE SAME MANNER AS
33 REQUIRED FOR AN INVITATION FOR COMPETITIVE SEALED BIDS UNDER § 13-103 OF
34 THIS ARTICLE.

1 13-505.

2 (A) THE PROCUREMENT OFFICER MAY DETERMINE, IN WRITING, THAT IT IS IN
3 THE INTEREST OF THE STATE TO INCLUDE ADDITIONAL TECHNICAL EVALUATION
4 CRITERIA OR ASSIGN WEIGHTS TO THE CRITERIA DIFFERENT THAN THOSE SET
5 FORTH IN § 13-504(B)(4) OF THIS SUBTITLE, SUBJECT TO THE FOLLOWING
6 REQUIREMENTS:

7 (1) THE RELATIVE WEIGHT OF PRICE MAY NOT BE LESS THAN 50% OF
8 THE TOTAL WEIGHT;

9 (2) THE TECHNICAL EVALUATION CRITERIA SET FORTH IN § 13-504(B)(4)
10 OF THIS SUBTITLE SHALL BE INCLUDED; AND

11 (3) ANY ADDITIONAL TECHNICAL EVALUATION CRITERIA SHALL BE
12 RELEVANT TO THE SUCCESSFUL COMPLETION OF THE CONTRACT OR OTHERWISE IN
13 THE BEST INTERESTS OF THE STATE.

14 (B) TECHNICAL EVALUATION CRITERIA AND RELATIVE WEIGHTS ASSIGNED
15 UNDER THIS SECTION MUST BE CLEARLY SET FORTH IN THE REQUEST FOR
16 PROPOSALS.

17 13-506.

18 (A) TECHNICAL PROPOSALS SUBMITTED UNDER THIS SUBTITLE MUST
19 INCLUDE THE QUALIFICATIONS AND CAPABILITIES OF THE OFFEROR AND ITS
20 PRELISTED SUBCONTRACTOR AND BE RESPONSIVE TO THE TECHNICAL EVALUATION
21 CRITERIA ESTABLISHED IN THE REQUEST FOR PROPOSALS.

22 (B) IN ADDITION TO ALL OTHER INFORMATION RESPONSIVE TO THE
23 REQUIREMENTS IDENTIFIED IN THE REQUEST FOR PROPOSAL, AN OFFEROR
24 SUBMITTING A PROPOSAL UNDER THIS SUBTITLE MUST INCLUDE THE FOLLOWING:

25 (1) A LIST OF ALL SUBCONTRACTORS PROPOSED FOR THE
26 PROCUREMENT CONTRACT WHOSE SUBCONTRACTS ARE VALUED AT \$500,000 OR
27 MORE;

28 (2) A LIST OF MBE FIRMS AND OTHER FIRMS THAT THE OFFEROR
29 PROPOSES FOR MEETING THE CONTRACTING GOALS ESTABLISHED BY TITLE 14,
30 SUBTITLE 3 OF THIS ARTICLE; AND

31 (3) AN IDENTIFICATION OF THE TYPE OF WORK TO BE PERFORMED BY
32 EACH PRELISTED SUBCONTRACTOR.

33 (C) AN OFFEROR MAY NOT PRELIST ALTERNATE SUBCONTRACTORS.

34 (D) AN OFFEROR MAY NOT SUBSTITUTE AN ALTERNATE SUBCONTRACTOR
35 FOR A PRELISTED SUBCONTRACTOR WITHOUT THE EXPRESS, WRITTEN
36 AUTHORIZATION OF THE PROCUREMENT OFFICER PRIOR TO THE COMMENCEMENT
37 OF WORK.

1 13-507.

2 (A) PRICE PROPOSALS SHALL REMAINED SEALED UNTIL ALL TECHNICAL
3 PROPOSALS HAVE BEEN EVALUATED.

4 (B) (1) TECHNICAL PROPOSALS SHALL BE EVALUATED AND SCORED BY A
5 TECHNICAL EVALUATION TEAM CONSISTING OF AT LEAST THREE PERSONS
6 EXPERIENCED IN CONSTRUCTION PROCUREMENT.

7 (2) EACH TECHNICAL FACTOR SPECIFIED IN THE REQUEST FOR
8 PROPOSALS SHALL BE GIVEN A NUMERICAL SCORE IN ACCORDANCE WITH THE
9 WEIGHT ASSIGNED TO IT IN THE REQUEST FOR PROPOSALS BASED ON THE
10 EVALUATION PROCESS CONDUCTED BY THE TECHNICAL EVALUATION TEAM.

11 (3) TECHNICAL EVALUATION SCORES SHALL BE BASED ON AN
12 EVALUATION OF THE OFFEROR AND ITS PRELISTED SUBCONTRACTORS BASED ON
13 RELEVANT INFORMATION AND DATA OBTAINED BY THE TECHNICAL EVALUATION
14 TEAM.

15 (4) IF AN OFFEROR OR A LISTED SUBCONTRACTOR IS A NEW BUSINESS
16 AND DOES NOT HAVE A PERFORMANCE RECORD SUFFICIENT TO EVALUATE ITS PAST
17 PERFORMANCE, THE TECHNICAL EVALUATION TEAM SHALL CONSIDER THE PAST
18 PERFORMANCE OF THE OFFEROR'S OR SUBCONTRACTOR'S OFFICERS, MANAGEMENT,
19 AND OWNERS OR PARTNERS.

20 (5) WHEN AN OFFEROR IS A JOINT VENTURE, THE TECHNICAL
21 EVALUATION TEAM SHALL CONSIDER THE QUALIFICATIONS OF ALL ENTITIES
22 INCLUDED IN THE JOINT VENTURE.

23 (6) A TOTAL TECHNICAL EVALUATION SCORE SHALL BE OBTAINED BY
24 ADDING THE SCORES ON ALL TECHNICAL EVALUATION FACTORS.

25 (C) ONCE A TOTAL TECHNICAL EVALUATION SCORE HAS BEEN DETERMINED,
26 PRICE PROPOSALS SHALL BE OPENED AND SCORED AS FOLLOWS:

27 (1) THE OFFEROR SUBMITTING THE LOWEST PRICE SHALL RECEIVE THE
28 MAXIMUM PRICE SCORE, ACCORDING TO THE PERCENTAGE VALUE STATED FOR
29 PRICE IN THE REQUEST FOR PROPOSALS; AND

30 (2) THE PRICE PROPOSED BY EACH SUCCESSIVE OFFEROR SHALL BE
31 SCORED RELATIVE TO THE LOWEST PRICE, ACCORDING TO THE FOLLOWING
32 FORMULA:

33 (I) THE LOWEST PRICE OFFERED SHALL BE DIVIDED BY THE NEXT
34 LOWEST PRICE;

35 (II) THE RESULTING FIGURE SHALL BE MULTIPLIED BY THE
36 PERCENTAGE VALUE FOR PRICE STATED IN THE REQUEST FOR PROPOSALS; AND

1 (III) THE PRICE SCORE OF EACH ADDITIONAL OFFEROR SHALL BE
2 CALCULATED IN THE SAME MANNER.

3 (D) THE PRICE SCORE AND FINAL TECHNICAL SCORE OF EACH PROPOSAL
4 SHALL BE COMBINED FOR A TOTAL SCORE.

5 (E) THE OFFEROR WITH THE HIGHEST TOTAL SCORE SHALL BE AWARDED
6 THE PROCUREMENT CONTRACT, PROVIDED ITS PROPOSAL IS RESPONSIVE TO THE
7 REQUEST FOR PROPOSALS AND SPECIFICATIONS AND IT IS DETERMINED TO BE A
8 RESPONSIBLE CONTRACTOR.

9 13-508.

10 (A) AN UNSUCCESSFUL OFFEROR SHALL RECEIVE, AT THE REQUEST OF THE
11 OFFEROR, A DEBRIEFING BY THE PROCUREMENT OFFICER WHO SHALL PROVIDE, AT
12 A MINIMUM:

13 (1) THE PRICE AND FINAL TECHNICAL SCORE OF THE SUCCESSFUL
14 OFFEROR;

15 (2) THE FINAL TECHNICAL SCORE OF THE OFFEROR REQUESTING THE
16 DEBRIEFING; AND

17 (3) THE OVERALL RANKING OF ALL OFFERORS, IF A RANKING WAS
18 DEVELOPED.

19 (B) THE DEBRIEFING BY THE PROCUREMENT OFFICER MAY NOT DISCLOSE
20 ANY INFORMATION PROHIBITED FROM DISCLOSURE BY LAW.

21 13-509.

22 (A) TO THE EXTENT THAT THE REGULATIONS SET FORTH IN COMAR 21.05.03
23 GOVERNING COMPETITIVE SEALED PROPOSALS ARE CONSISTENT WITH THIS
24 SUBTITLE, THESE REGULATIONS SHALL APPLY.

25 (B) THE BOARD MAY DEVELOP ADDITIONAL REGULATIONS NECESSARY TO
26 CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

27 13-510.

28 THIS SUBTITLE MAY BE CITED AS THE "MARYLAND CONSTRUCTION QUALITY
29 ASSURANCE ACT".

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
31 effect October 1, 2003.