

HOUSE BILL 280

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SB 238/03 - EHE

2004 Regular Session
4r1521
CF 4r1404

By: **Delegate McIntosh**
Introduced and read first time: January 26, 2004
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2004

CHAPTER _____

1 AN ACT concerning

2 ~~Procurement - Construction Contracts - Maryland Construction Quality~~
3 ~~Assurance Act~~ Procurement - Competitive Sealed Proposals - Use

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~~ repealing the requirement that a head of a
15 unit of State government make a certain determination before using the
16 competitive sealed proposal method of procurement under certain
17 circumstances; and generally relating to the use of competitive sealed proposals
18 in procurement.

19 BY repealing and reenacting, with amendments,
20 Article - State Finance and Procurement
21 Section ~~13-102~~ 13-104(a)
22 Annotated Code of Maryland
23 (2001 Replacement Volume and 2003 Supplement)

24 ~~BY adding to~~
25 ~~Article - State Finance and Procurement~~

1 Section 13-501 through 13-510, inclusive, to be under the new subtitle "Subtitle
2 5. Maryland Construction Quality Assurance Act"
3 Annotated Code of Maryland
4 (2001 Replacement Volume and 2003 Supplement)

5 Preamble

6 ~~WHEREAS, The purpose of the Maryland Construction Quality Assurance Act is~~
7 ~~to authorize competitive best value contracting for certain public construction~~
8 ~~contracts in order to provide State procurement units with an effective policy for~~
9 ~~improving construction project delivery; and~~

10 ~~WHEREAS, Extensive experience with this procurement method by federal~~
11 ~~government agencies, the Maryland Stadium Authority, and local contracting~~
12 ~~agencies demonstrates that competitive best value contracting provides substantial~~
13 ~~benefits for State agencies, the contracting community, and taxpayers; and~~

14 ~~WHEREAS, By permitting State contracting agencies to consider and evaluate~~
15 ~~important performance and qualification factors, best value contracting enables~~
16 ~~procurement units to improve quality and cost efficiency and obtain better overall~~
17 ~~value in State construction contracts; and~~

18 ~~WHEREAS, Evaluation of key qualification factors, including past performance,~~
19 ~~management capabilities, and project staffing, can assist contracting agencies in~~
20 ~~achieving the most advantageous results for the State, while promoting greater~~
21 ~~accountability among the contractors and subcontractors who benefit from public~~
22 ~~works projects; and~~

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

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

31 ~~WHEREAS, Future public works contracts for the State will be used to renovate~~
32 ~~and expand Maryland's infrastructure system, and procurement units responsible for~~
33 ~~administering these vital contracts must have access to the most effective~~
34 ~~procurement methods available to obtain the best results for the State; now,~~
35 ~~therefore,~~

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
37 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] SUBTITLES 3, 4, AND 5~~ of
4 this title, all procurement by units shall be by competitive sealed bids unless one of
5 the following 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;
- 12 (6) an intergovernmental cooperative purchasing agreement under §
13 13-110 of this subtitle;
- 14 (7) auction bids under § 13-111 of this subtitle; or
- 15 (8) an unsolicited proposal under § 13-107.1 of this subtitle.

16 (b) (1) In awarding a procurement contract for human, social, cultural, or
17 educational service, the preferred method is by competitive sealed proposals under §
18 13-104 of this subtitle.

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

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

25 **SUBTITLE 5. MARYLAND CONSTRUCTION QUALITY ASSURANCE ACT.**

26 ~~13-501.~~

27 (A) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
28 ~~INDICATED.~~

29 (B) ~~"COMPETITIVE BEST VALUE CONTRACTING" MEANS A METHOD OF~~
30 ~~PROCUREMENT THAT:~~

31 (1) ~~UTILIZES THE SOLICITATION OF COMPETITIVE SEALED PROPOSALS;~~
32 ~~AND~~

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

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

7 (1) KEY MANAGEMENT PERSONNEL PROPOSED FOR THE PROJECT;

8 (2) PROPOSED PROJECT SCHEDULE;

9 (3) QUALITY CONTROL PROGRAMS; AND

10 (4) SAFETY PROGRAMS.

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

13 (E) "PAST PERFORMANCE" MEANS INFORMATION AND DATA ON A
14 CONTRACTOR'S OR SUBCONTRACTOR'S PERFORMANCE ON CONSTRUCTION
15 PROJECTS SIMILAR IN SIZE AND SCOPE TO THE PROCUREMENT CONTRACT FOR THE
16 PAST 3 YEARS AND INCLUDES THE DEGREE TO WHICH THE CONTRACTOR OR
17 SUBCONTRACTOR:

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

19 (2) COMPLIED WITH PROJECT PLANS AND SPECIFICATIONS;

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

22 (4) COMPLIED WITH APPLICABLE LAWS AND REGULATIONS.

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

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

29 (2) TYPES OF TRAINING PROVIDED BY THE CONTRACTOR OR
30 SUBCONTRACTOR;

31 (3) IDENTIFICATION OF TRAINING PROVIDERS;

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

- 1 (III) ~~MANAGEMENT PLAN—5%;~~
2 (IV) ~~PROJECT STAFFING PLAN—5%; AND~~
3 (V) ~~FULFILLMENT OF CONTRACTING GOALS ESTABLISHED BY~~
4 ~~TITLE 14, SUBTITLE 3 OF THIS ARTICLE—7%.~~

5 ~~(C) A PRIMARY PROCUREMENT UNIT SHALL GIVE PUBLIC NOTICE OF A~~
6 ~~REQUEST FOR PROPOSALS UNDER THIS SECTION IN THE SAME MANNER AS~~
7 ~~REQUIRED FOR AN INVITATION FOR COMPETITIVE SEALED BIDS UNDER § 13-103 OF~~
8 ~~THIS TITLE.~~

9 ~~13-505.~~

10 ~~(A) THE PROCUREMENT OFFICER MAY DETERMINE, IN WRITING, THAT IT IS IN~~
11 ~~THE INTEREST OF THE STATE TO INCLUDE ADDITIONAL TECHNICAL EVALUATION~~
12 ~~CRITERIA OR ASSIGN WEIGHTS TO THE CRITERIA DIFFERENT FROM THOSE SET~~
13 ~~FORTH IN § 13-504(B)(4) OF THIS SUBTITLE, SUBJECT TO THE FOLLOWING~~
14 ~~REQUIREMENTS:~~

15 ~~(1) THE RELATIVE WEIGHT OF PRICE MAY NOT BE LESS THAN 50% OF~~
16 ~~THE TOTAL WEIGHT;~~

17 ~~(2) THE TECHNICAL EVALUATION CRITERIA SET FORTH IN § 13-504(B)(4)~~
18 ~~OF THIS SUBTITLE MAY NOT BE EXCLUDED; AND~~

19 ~~(3) ANY ADDITIONAL TECHNICAL EVALUATION CRITERIA THAT ARE~~
20 ~~RELEVANT TO THE SUCCESSFUL COMPLETION OF THE CONTRACT OR OTHERWISE IN~~
21 ~~THE BEST INTERESTS OF THE STATE.~~

22 ~~(B) TECHNICAL EVALUATION CRITERIA AND RELATIVE WEIGHTS ASSIGNED~~
23 ~~UNDER THIS SECTION MUST BE CLEARLY SET FORTH IN THE REQUEST FOR~~
24 ~~PROPOSALS.~~

25 ~~13-506.~~

26 ~~(A) TECHNICAL PROPOSALS SUBMITTED UNDER THIS SUBTITLE MUST~~
27 ~~INCLUDE THE QUALIFICATIONS AND CAPABILITIES OF THE OFFEROR AND ANY~~
28 ~~PRELISTED SUBCONTRACTOR AND BE RESPONSIVE TO THE TECHNICAL EVALUATION~~
29 ~~CRITERIA ESTABLISHED IN THE REQUEST FOR PROPOSALS.~~

30 ~~(B) IN ADDITION TO ALL OTHER INFORMATION RESPONSIVE TO THE~~
31 ~~REQUIREMENTS IDENTIFIED IN THE REQUEST FOR PROPOSAL, AN OFFEROR~~
32 ~~SUBMITTING A PROPOSAL UNDER THIS SUBTITLE SHALL INCLUDE THE FOLLOWING:~~

33 ~~(1) A LIST OF ALL SUBCONTRACTORS PROPOSED FOR THE~~
34 ~~PROCUREMENT CONTRACT WHOSE SUBCONTRACTS ARE VALUED AT \$500,000 OR~~
35 ~~MORE;~~

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

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

6 (C) ~~AN OFFEROR MAY NOT PRELIST ALTERNATE SUBCONTRACTORS.~~

7 (D) ~~AN OFFEROR MAY NOT SUBSTITUTE AN ALTERNATE SUBCONTRACTOR
8 FOR A PRELISTED SUBCONTRACTOR WITHOUT THE EXPRESS WRITTEN
9 AUTHORIZATION OF THE PROCUREMENT OFFICER PRIOR TO THE COMMENCEMENT
10 OF WORK.~~

11 13-507.

12 (A) ~~PRICE PROPOSALS SHALL REMAIN SEALED UNTIL ALL TECHNICAL
13 PROPOSALS HAVE BEEN EVALUATED.~~

14 (B) (1) ~~TECHNICAL PROPOSALS SHALL BE EVALUATED AND SCORED BY A
15 TECHNICAL EVALUATION TEAM CONSISTING OF AT LEAST THREE PERSONS
16 EXPERIENCED IN CONSTRUCTION PROCUREMENT.~~

17 (2) ~~EACH TECHNICAL FACTOR SPECIFIED IN THE REQUEST FOR
18 PROPOSALS SHALL BE GIVEN A NUMERICAL SCORE IN ACCORDANCE WITH THE
19 WEIGHT ASSIGNED TO IT IN THE REQUEST FOR PROPOSALS BASED ON THE
20 EVALUATION PROCESS CONDUCTED BY THE TECHNICAL EVALUATION TEAM.~~

21 (3) ~~TECHNICAL EVALUATION SCORES SHALL BE BASED ON AN
22 EVALUATION OF THE OFFEROR AND ITS PRELISTED SUBCONTRACTORS BASED ON
23 RELEVANT INFORMATION AND DATA OBTAINED BY THE TECHNICAL EVALUATION
24 TEAM.~~

25 (4) ~~IF AN OFFEROR OR A LISTED SUBCONTRACTOR IS A NEW BUSINESS
26 AND DOES NOT HAVE A PERFORMANCE RECORD SUFFICIENT TO EVALUATE ITS PAST
27 PERFORMANCE, THE TECHNICAL EVALUATION TEAM SHALL CONSIDER THE PAST
28 PERFORMANCE OF THE OFFEROR'S OR SUBCONTRACTOR'S OFFICERS, MANAGEMENT,
29 AND OWNERS OR PARTNERS.~~

30 (5) ~~WHEN AN OFFEROR IS A JOINT VENTURE, THE TECHNICAL
31 EVALUATION TEAM SHALL CONSIDER THE QUALIFICATIONS OF ALL ENTITIES
32 INCLUDED IN THE JOINT VENTURE.~~

33 (6) ~~A TOTAL TECHNICAL EVALUATION SCORE SHALL BE OBTAINED BY
34 ADDING THE SCORES ON ALL TECHNICAL EVALUATION FACTORS.~~

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

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

4 (2) ~~THE PRICE PROPOSED BY EACH SUCCESSIVE OFFEROR SHALL BE~~
5 ~~SCORED RELATIVE TO THE LOWEST PRICE, ACCORDING TO THE FOLLOWING~~
6 ~~FORMULA:~~

7 (I) ~~THE LOWEST PRICE OFFERED SHALL BE DIVIDED BY THE NEXT~~
8 ~~LOWEST PRICE;~~

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

11 (III) ~~THE PRICE SCORE OF EACH ADDITIONAL OFFEROR SHALL BE~~
12 ~~CALCULATED IN THE SAME MANNER.~~

13 (D) ~~THE PRICE SCORE AND FINAL TECHNICAL SCORE OF EACH PROPOSAL~~
14 ~~SHALL BE COMBINED FOR A TOTAL SCORE.~~

15 (E) ~~THE OFFEROR WITH THE HIGHEST TOTAL SCORE SHALL BE AWARDED~~
16 ~~THE PROCUREMENT CONTRACT, PROVIDED THE OFFEROR'S PROPOSAL IS~~
17 ~~RESPONSIVE TO THE REQUEST FOR PROPOSALS AND SPECIFICATIONS AND THE~~
18 ~~OFFEROR IS DETERMINED TO BE A RESPONSIBLE CONTRACTOR.~~

19 ~~13-508.~~

20 (A) ~~AN UNSUCCESSFUL OFFEROR SHALL RECEIVE, AT THE REQUEST OF THE~~
21 ~~OFFEROR, A DEBRIEFING BY THE PROCUREMENT OFFICER, WHO SHALL PROVIDE, AT~~
22 ~~A MINIMUM:~~

23 (1) ~~THE PRICE AND FINAL TECHNICAL SCORE OF THE SUCCESSFUL~~
24 ~~OFFEROR;~~

25 (2) ~~THE FINAL TECHNICAL SCORE OF THE OFFEROR REQUESTING THE~~
26 ~~DEBRIEFING; AND~~

27 (3) ~~THE OVERALL RANKING OF ALL OFFERORS, IF A RANKING WAS~~
28 ~~DEVELOPED.~~

29 (B) ~~THE DEBRIEFING BY THE PROCUREMENT OFFICER MAY NOT DISCLOSE~~
30 ~~ANY INFORMATION PROHIBITED FROM DISCLOSURE BY LAW.~~

31 ~~13-509.~~

32 (A) ~~TO THE EXTENT THAT THE REGULATIONS SET FORTH IN COMAR 21.05.03~~
33 ~~GOVERNING COMPETITIVE SEALED PROPOSALS ARE CONSISTENT WITH THIS~~
34 ~~SUBTITLE, THESE REGULATIONS SHALL APPLY.~~

35 (B) ~~THE BOARD MAY DEVELOP ADDITIONAL REGULATIONS NECESSARY TO~~
36 ~~CARRY OUT THE PROVISIONS OF THIS SUBTITLE.~~

1 ~~13-510.~~

2 ~~THIS SUBTITLE MAY BE CITED AS THE "MARYLAND CONSTRUCTION QUALITY~~
3 ~~ASSURANCE ACT".~~

4 13-104.

5 (a) Competitive sealed proposals may be used if:

6 (1) the procurement is for human, social, cultural, or educational
7 services;

8 (2) with the approval of the head of a unit, the procurement officer
9 determines that specifications cannot be prepared that allow an award based on the
10 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
11 11-202(3) of this article, the bid most favorable to the State; or

12 (3) the head of the unit determines [that:

13 (i) the need to use a method other than competitive sealed bids is
14 sufficiently compelling to override the general public policy that favors awarding
15 procurement contracts on the basis of competitive sealed bids; and

16 (ii) THAT the use of competitive sealed bidding for that
17 procurement contract is not practicable or not advantageous to the State.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect October 1, 2004.