
By: **Delegates Morhaim, Busch, Barve, Jones, Hurson, Owings, Bromwell, Bronrott, Burns, Cardin, V. Clagett, Donoghue, Goldwater, Hammen, Hubbard, Kach, Krebs, Lee, Moe, Murray, Nathan-Pulliam, Oaks, Rosenberg, Rudolph, Smigiel, Sophocleus, Weldon, and ~~Zirkin~~ Zirkin, Benson, Boteler, Boutin, Costa, Elliott, Mandel, McDonough, Pendergrass, and V. Turner**

Introduced and read first time: February 5, 2004
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 9, 2004

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Request for Proposals or Invitation for Bids - Notice**

3 FOR the purpose of requiring that, until a certain date, notice of certain
4 procurements be provided in a certain manner; providing that, on and after a
5 certain date, notice of certain procurements be provided in a certain manner;
6 prohibiting a unit from charging a fee to access certain information that is
7 required to be published in eMaryland Marketplace; providing for the
8 assessment of a fee against persons to whom certain procurement contracts are
9 awarded to pay certain publication costs; requiring the Department of Budget
10 and Management to adopt certain regulations to establish a certain fee; and
11 generally relating to notice requirements for certain procurements.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 13-103(c) and (f), 13-104(g), and 13-107.1(i), (j), and (k)
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - State Finance and Procurement
19 Section 13-104(a) and (c) and 13-107.1(a) and (b)
20 Annotated Code of Maryland

1 (2001 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - State Finance and Procurement

4 Section 13-103(g), 13-104(h), and 13-107.1(k)

5 Annotated Code of Maryland

6 (2001 Replacement Volume and 2003 Supplement)

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

9 **Article - State Finance and Procurement**

10 13-103.

11 (c) (1) A unit shall give public notice of an invitation for bids before bid
12 opening in accordance with this subsection.

13 (2) A unit shall give reasonable notice that shall be at least 10 days
14 before bid opening.

15 (3) [The] UNTIL JULY 1, 2007, THE unit shall publish notice in the
16 Contract Weekly [and], Contract Weekly Online, AND EMARYLAND MARKETPLACE at
17 least 20 days before bid opening if:

18 (i) the procurement officer reasonably expects bid prices to exceed
19 \$25,000 or a lower amount set by the Board by regulation in accordance with Title 10,
20 Subtitle 1 of the State Government Article; and

21 (ii) at least part of the procurement contract is to be performed in
22 this State or the District of Columbia.

23 (4) ON AND AFTER JULY 1, 2007, THE UNIT SHALL PUBLISH THE NOTICE
24 REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION IN EMARYLAND
25 MARKETPLACE.

26 [(4)] (5) In addition to any notice required under this subsection, a unit
27 may publish notice of an invitation for bids:

28 (i) [in the Contract Weekly in accordance with Title 7, Subtitle 2 of
29 the State Government Article;

30 (ii)] on a bid board or eMaryland Marketplace; or

31 [(iii)] (II) in a newspaper, periodical, or trade journal.

32 (f) Not more than 30 days after the execution and approval of a procurement
33 contract in excess of \$25,000 awarded under this section, or a lower amount set by the

1 Board by regulation in accordance with Title 10, Subtitle 1 of the State Government
2 Article, a unit shall publish [in the Contract Weekly] notice of the award:

3 (1) UNTIL JULY 1, 2007, IN THE CONTRACT WEEKLY AND EMARYLAND
4 MARKETPLACE; AND

5 (2) ON AND AFTER JULY 1, 2007, IN EMARYLAND MARKETPLACE.

6 (G) (1) A UNIT MAY NOT CHARGE A FEE TO ACCESS THE INFORMATION THAT
7 IS REQUIRED TO BE PUBLISHED UNDER THIS SECTION IN EMARYLAND
8 MARKETPLACE.

9 (2) TO PAY THE COSTS INCURRED TO PUBLISH THE INFORMATION
10 REQUIRED UNDER THIS SECTION IN EMARYLAND MARKETPLACE, THE UNIT SHALL
11 DEDUCT AND RETAIN FROM THE PROCUREMENT CONTRACT PRICE THAT WAS
12 SUBMITTED BY THE RESPONSIBLE BIDDER TO WHOM THE PROCUREMENT
13 CONTRACT WAS AWARDED THE FEE SPECIFIED BY THE DEPARTMENT OF BUDGET
14 AND MANAGEMENT UNDER PARAGRAPH (3) OF THIS SUBSECTION.

15 (3) (I) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL
16 ESTABLISH BY REGULATION, AND ADJUST EACH FISCAL YEAR AS NECESSARY, THE
17 FEE THAT IS TO BE DEDUCTED FROM EACH PROCUREMENT CONTRACT UNDER THIS
18 SECTION.

19 (II) THE FEE SHALL BE SET AT AN AMOUNT THAT IS SUFFICIENT TO
20 PAY THE COSTS TO PUBLISH THE INFORMATION REQUIRED UNDER THIS SECTION IN
21 EMARYLAND MARKETPLACE.

22 13-104.

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

24 (1) the procurement is for human, social, cultural, or educational
25 services;

26 (2) with the approval of the head of a unit, the procurement officer
27 determines that specifications cannot be prepared that allow an award based on the
28 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
29 11-202(3) of this article, the bid most favorable to the State; or

30 (3) the head of the unit determines that:

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

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

1 (c) A unit shall publish a request for proposals in the same manner as
2 required for an invitation for bids.

3 (g) A unit shall publish [in the Contract Weekly] notice of a contract in excess
4 of \$25,000 awarded under this section, or a lower amount set by the Board by
5 regulation in accordance with Title 10, Subtitle 1 of the State Government Article AS
6 FOLLOWS:

7 (1) UNTIL JULY 1, 2007, IN THE CONTRACT WEEKLY AND IN EMARYLAND
8 MARKETPLACE; AND

9 (2) ON AND AFTER JULY 1, 2007, IN EMARYLAND MARKETPLACE.

10 (H) (1) A UNIT MAY NOT CHARGE A FEE TO ACCESS THE INFORMATION THAT
11 IS REQUIRED TO BE PUBLISHED UNDER THIS SECTION IN EMARYLAND
12 MARKETPLACE.

13 (2) TO PAY THE COSTS INCURRED TO PUBLISH THE INFORMATION
14 REQUIRED UNDER THIS SECTION IN EMARYLAND MARKETPLACE, THE UNIT SHALL
15 DEDUCT AND RETAIN FROM THE PROCUREMENT CONTRACT PRICE THAT WAS
16 SUBMITTED BY THE RESPONSIBLE BIDDER TO WHOM THE PROCUREMENT
17 CONTRACT WAS AWARDED THE FEE SPECIFIED BY THE DEPARTMENT OF BUDGET
18 AND MANAGEMENT UNDER PARAGRAPH (3) OF THIS SUBSECTION.

19 (3) (I) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL
20 ESTABLISH BY REGULATION, AND ADJUST EACH FISCAL YEAR AS NECESSARY, THE
21 FEE THAT IS TO BE DEDUCTED FROM EACH PROCUREMENT CONTRACT UNDER THIS
22 SECTION.

23 (II) THE FEE SHALL BE SET AT AN AMOUNT THAT IS SUFFICIENT TO
24 PAY THE COSTS TO PUBLISH THE INFORMATION REQUIRED UNDER THIS SECTION IN
25 EMARYLAND MARKETPLACE.

26 13-107.1.

27 (a) (1) In this section the following words have the meanings indicated.

28 (2) "Business and economic development services" means services
29 procured by the Department of Business and Economic Development.

30 (3) "Educational services" means services procured to provide or assist in
31 providing training to third-party clients under a contract.

32 (4) "Health or social services" means services procured to provide or
33 assist in providing support, care, or shelter to third-party clients under a contract.

34 (b) A procurement officer may enter into a contract based on an unsolicited
35 proposal if the unsolicited proposal:

36 (1) is in writing;

1 (2) (i) contains a novel or innovative concept, application, approach, or
 2 method which, to the knowledge of the procurement officer, is not used by or available
 3 to another unit; or

4 (ii) demonstrates a novel capability of the offeror of the proposal;

5 (3) has not been previously submitted to the unit by another person;

6 (4) is for the delivery of:

7 (i) educational services;

8 (ii) health or social services; or

9 (iii) business and economic development services; and

10 (5) meets a need of or is otherwise advantageous to the unit.

11 (i) (1) Not less than 30 days before the execution and award, of a contract
 12 based on an unsolicited proposal under this section, the contracting unit shall publish
 13 a general notice of the intent to award the contract [in] AS FOLLOWS:

14 (i) UNTIL JULY 1, 2007, IN the Contract Weekly AND IN
 15 EMARYLAND MARKETPLACE; ~~and~~

16 (II) ON AND AFTER JULY 1, 2007, IN EMARYLAND MARKETPLACE;
 17 AND

18 (ii) (III) ~~[IN~~ at least one newspaper of general circulation in:

19 1. the county of the agency to be served under the contract;
 20 and

21 2. if applicable, the county of the client population to be
 22 served by the agency under the contract; ~~ON AND AFTER JULY 1, 2007, IN EMARYLAND~~
 23 ~~MARKETPLACE.~~

24 (2) ~~[F~~or purposes of this subsection:

25 (i) the Baltimore Sun and the Washington Post shall be considered
 26 newspapers of general circulation in the counties of the State; and

27 (ii) in Baltimore City, Baltimore County, and Anne Arundel County,
 28 the Baltimore Afro-American shall be considered a newspaper of general circulation.

29 (3) ~~[~~If, during the 30-day period established under paragraph (1) of this
 30 subsection, a person petitions the interagency panel for reconsideration of a
 31 determination of approval under subsection (b) of this section, the interagency panel
 32 shall reconsider the determination of approval and make written findings affirming
 33 or reversing the determination of approval.

1 (j) In addition to publishing notice of the intent to award a contract based on
2 an unsolicited proposal under subsection (i) of this section, not more than 30 days
3 after the execution and approval of a procurement contract awarded under this
4 section, a unit shall publish notice of the award [in the Contract Weekly] AS
5 FOLLOWS:

6 (1) UNTIL JULY 1, 2007, IN THE CONTRACT WEEKLY AND IN EMARYLAND
7 MARKETPLACE; AND

8 (2) ON AND AFTER JULY 1, 2007, IN EMARYLAND MARKETPLACE.

9 (K) (1) A UNIT MAY NOT CHARGE A FEE TO ACCESS THE INFORMATION THAT
10 IS REQUIRED TO BE PUBLISHED UNDER THIS SECTION IN EMARYLAND
11 MARKETPLACE.

12 (2) TO PAY THE COSTS INCURRED TO PUBLISH THE INFORMATION
13 REQUIRED UNDER THIS SECTION IN EMARYLAND MARKETPLACE, THE UNIT SHALL
14 DEDUCT AND RETAIN FROM THE PROCUREMENT CONTRACT PRICE THAT WAS
15 SUBMITTED BY THE RESPONSIBLE BIDDER TO WHOM THE PROCUREMENT
16 CONTRACT WAS AWARDED THE FEE SPECIFIED BY THE DEPARTMENT OF BUDGET
17 AND MANAGEMENT UNDER PARAGRAPH (3) OF THIS SUBSECTION.

18 (3) (I) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL
19 ESTABLISH BY REGULATION, AND ADJUST EACH FISCAL YEAR AS NECESSARY, THE
20 FEE THAT IS TO BE DEDUCTED FROM EACH PROCUREMENT CONTRACT UNDER THIS
21 SECTION.

22 (II) THE FEE SHALL BE SET AT AN AMOUNT THAT IS SUFFICIENT TO
23 PAY THE COSTS TO PUBLISH THE INFORMATION REQUIRED UNDER THIS SECTION IN
24 EMARYLAND MARKETPLACE.

25 [(k)] (L) The following agencies shall implement an educational outreach
26 campaign on the availability of the unsolicited proposal method of procurement:

27 (1) the Department of Health and Mental Hygiene;

28 (2) the Department of Human Resources;

29 (3) the Department of Labor, Licensing, and Regulation;

30 (4) the Department of Juvenile Services;

31 (5) the Office for Individuals with Disabilities;

32 (6) the Department of Aging; and

33 (7) the Department of Business and Economic Development.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 July 1, 2004.

