

SENATE BILL 56

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P2

2004 Regular Session  
4r0035

(PRE-FILED)

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By: **Chairman, Education, Health, and Environmental Affairs Committee**  
**(By Request - Departmental - Transportation)**

Requested: November 3, 2003  
Introduced and read first time: January 14, 2004  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 16, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Ethics Law - Architectural and Engineering Services - Restrictions on**  
3 **Participation in Procurement**

4 FOR the purpose of ~~clarifying~~ providing that certain design activities do not  
5 disqualify an individual from participating in or assisting others in  
6 participating in certain procurements; requiring the Maryland Department of  
7 Transportation to report to certain persons by a certain date regarding the  
8 implementation of this Act; providing for the application of this Act; providing  
9 for the effective ~~date of certain provisions~~ dates of this Act; ~~and~~ providing for the  
10 termination of certain provisions of this Act; and generally relating to  
11 procurement for design activities under the State ethics law.

12 BY repealing and reenacting, with amendments,  
13 Article - State Government  
14 Section 15-508  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2003 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - State Government  
19 Section 15-508  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume and 2003 Supplement)  
22 (As enacted by ~~Chapter 482 of the Acts of the General Assembly of 2002~~ Section

1 1 of this Act)

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

4 **Article - State Government**

5 15-508.

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

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

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

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

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

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

23 (3) providing specifications for a sole source procurement made in  
24 accordance with § 13-107 of the State Finance and Procurement Article;

25 (4) providing architectural and engineering services for:

26 (I) programming, master planning, or other project planning  
27 services, ~~INCLUDING PRELIMINARY DESIGN SERVICES THAT INVOLVE NO~~  
28 ~~CONSTRUCTION PHASE RESPONSIBILITIES~~; or

29 (II) THE DESIGN OF A CONSTRUCTION PROJECT IF:

30 1. THE ANTICIPATED VALUE OF THE PROCUREMENT  
31 CONTRACT AT THE TIME OF ADVERTISEMENT IS AT LEAST \$2,500,000 AND NOT MORE  
32 THAN \$40,000,000; AND

33 2. THE DESIGN SERVICES DO NOT INVOLVE LEAD OR PRIME  
34 DESIGN RESPONSIBILITIES OR CONSTRUCTION PHASE RESPONSIBILITIES ON  
35 BEHALF OF THE STATE; OR

1 (5) providing specifications for an unsolicited proposal procurement  
2 made in accordance with § 13-107.1 of the State Finance and Procurement Article.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
4 read as follows:

5 **Article - State Government**

6 15-508.

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

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

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

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

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

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

24 (3) providing specifications for a sole source procurement made in  
25 accordance with § 13-107 of the State Finance and Procurement Article; ~~or~~

26 ~~(4) providing architectural and engineering services for programming,~~  
27 ~~master planning, or other project planning services, INCLUDING PRELIMINARY~~  
28 ~~DESIGN SERVICES THAT INVOLVE NO CONSTRUCTION PHASE RESPONSIBILITIES~~

29 (4) providing architectural and engineering services for:

30 (i) programming, master planning, or other project planning  
31 services; or

32 (ii) the design of a construction project if:

33 1. the anticipated value of the procurement contract at the  
34 time of advertisement is at least \$2,500,000 and not more than [\$40,000,000]  
35 \$100,000,000; and

1                               2.       the design services do not involve lead or prime design  
2 responsibilities on construction phase responsibilities on behalf of the State; or

3                               (5)       providing specifications for an unsolicited proposal procurement  
4 made in accordance with § 13-107.1 of the State Finance and Procurement Article.

5       SECTION 3. AND BE IT FURTHER ENACTED, That on or before September  
6 30, 2005, and annually thereafter through September 30, 2008, inclusive, the  
7 Maryland Department of Transportation shall report to the Governor and, in  
8 accordance with § 2-1246 of the State Government Article, to the General Assembly  
9 regarding the implementation of this Act by the Department during the immediately  
10 preceding fiscal year, including the impact of this Act on small business and minority  
11 business enterprises.

12       SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be  
13 construed to apply only prospectively and may not be applied or interpreted to have  
14 any effect on or application to any project or program that has been advertised for  
15 construction before the effective date of this Act.

16       SECTION 5. AND BE IT FURTHER ENACTED, That, notwithstanding the  
17 abrogation of this Act, this Act shall be applicable to any procurement contract in  
18 connection with a project or program for which:

19                               (1)       final review under the National Environmental Policy Act or the  
20 Maryland Environmental Policy Act is completed on or before June 30, 2008; or

21                               (2)       an appropriation has been included on or before June 30, 2008, in the  
22 development and evaluation portion of the Consolidated Transportation Program.

23       ~~SECTION 3. 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act~~  
24 ~~shall take effect on the taking effect of the termination provision specified in Section~~  
25 ~~4 of Chapter 482 of the Acts of the General Assembly of 2002. If that termination~~  
26 ~~provision takes effect, Section 1 of this Act shall be abrogated and of no further force~~  
27 ~~and effect. This Act may not be interpreted to have any effect on that termination~~  
28 ~~provision July 1, 2006.~~

29       SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall  
30 take effect July 1, 2004. It shall remain effective for a period of 4 years and 3 months  
31 and, at the end of September 30, 2008, with no further action required by the General  
32 Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.

33       ~~SECTION 4. 8. AND BE IT FURTHER ENACTED, That, subject to the~~  
34 ~~provisions of Section 3 of this Act, this Act shall take effect October 1, 2004 except as~~  
35 ~~provided in Sections 6 and 7 of this Act, this Act shall take effect July 1, 2004. It shall~~  
36 ~~remain effective for a period of 4 years and, at the end of June 30, 2008, with no~~  
37 ~~further action required by the General Assembly, this Act shall be abrogated and of no~~  
38 ~~further force and effect.~~

