

CHAPTER 662

(House Bill 484)

AN ACT concerning

Procurement – Unsolicited Proposals – ~~Repeal~~ Extension of Termination Date

FOR the purpose of ~~repealing~~ extending the termination date for the use of unsolicited proposals as a method of State procurement; adding lottery services to the services that may be procured using certain unsolicited proposals; repealing a certain interagency panel; repealing a requirement that certain procurement officers forward certain unsolicited proposals to a certain interagency panel for a certain determination; requiring certain procurement officers to get the approval of the Department of Budget and Management before awarding certain contracts; altering the maximum term of certain contracts based on unsolicited proposals; altering the maximum annual and total State expenditures under certain contracts based on unsolicited proposals; requiring certain agencies to report to the Board of Public Works on the status of certain educational outreach activities; authorizing the Board to adopt certain regulations; repealing a certain reporting requirement; repealing certain obsolete provisions; defining a certain term; and generally relating to unsolicited proposals.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 13–107.1
Annotated Code of Maryland
(2006 Replacement Volume and 2007 Supplement)

BY repealing
Chapter 482 of the Acts of the General Assembly of 2002
Section 2

BY repealing and reenacting, with amendments,
Chapter 482 of the Acts of the General Assembly of 2002
Section 4

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

Article – State Finance and Procurement

13–107.1.

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

(2) “Business and economic development services” means services procured by the Department of Business and Economic Development.

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

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

(5) **“LOTTERY SERVICES” MEANS SERVICES PROCURED BY THE MARYLAND STATE LOTTERY AGENCY.**

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

(1) is in writing;

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

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

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

(4) is for the delivery of:

(i) educational services;

(ii) health or social services; [or]

(iii) business and economic development services; [and] OR

(IV) LOTTERY SERVICES; AND

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

[(c) (1) There is an interagency panel consisting of representatives appointed by the Governor from the following:

(i) the Department of Health and Mental Hygiene;

(ii) the Department of Human Resources;

- (iii) the Department of Labor, Licensing, and Regulation;
- (iv) the Department of Juvenile Services;
- (v) the Department of Disabilities;
- (vi) the Department of Aging;
- (vii) the Department of Business and Economic Development;
- (viii) the Council on Management and Productivity.

and

(2) (i) A procurement officer shall forward an unsolicited proposal submitted under this section to the interagency panel described under paragraph (1) of this subsection for review and a determination as to whether the unsolicited proposal meets the requirements of subsection (a) of this section.

(ii) (C) (1) The [interagency panel] PROCUREMENT OFFICER shall make a determination as to whether the unsolicited proposal meets the requirements of subsection [(a)] (B) of this section [by a majority vote of the panel:

1. at a meeting of panel members or their designees;
2. by a telephone poll of panel members; or
3. in writing].

[(iii)] (2) If the [interagency panel] PROCUREMENT OFFICER determines that the unsolicited proposal does not meet the requirements of subsection [(a)] (B) of this section, the procurement officer may not award a procurement contract based on the unsolicited proposal.

[(iv) 1.] (3)(I) The [interagency panel] PROCUREMENT OFFICER shall make a determination under [subparagraph (i) of this paragraph] PARAGRAPH (1) OF THIS SUBSECTION within 30 days after receiving the unsolicited proposal for review.

[2.] (II) If the [interagency panel] PROCUREMENT OFFICER fails to make a determination under [subparagraph (i) of this paragraph] PARAGRAPH (1) OF THIS SUBSECTION within the 30-day period established under this subparagraph, the unsolicited proposal shall be deemed to have been disapproved [by the interagency panel].

(d) If an unsolicited proposal meets the requirements of subsection (b) of this section, the offeror of the proposal is not required to be the only available source for the contract awarded under this section.

(e) Before awarding a procurement contract under this section, a procurement officer shall obtain:

(1) the approval of the head of the unit; [and]

(2) THE APPROVAL OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND

[(2)] (3) any other approval required by law.

(f) The term, including extensions, of a contract awarded under this section may not exceed [2] 3 years.

(g) State expenditures under a contract awarded under this section may not exceed [\$1,000,000] \$2,000,000 annually, AND MAY NOT EXCEED \$4,000,000 FOR THE TOTAL CONTRACT.

(h) (1) Except as provided under paragraph (2) of this subsection, a procurement officer shall treat the information contained in an unsolicited proposal as confidential information that is not subject to disclosure under any other State or local law.

(2) If a contract is awarded under this section, disclosure of the unsolicited proposal is governed by Title 10, Subtitle 6, Part III of the State Government Article.

(i) (1) Not less than 30 days before the execution and award of a contract based on an unsolicited proposal under this section, the contracting unit shall publish a general notice of the intent to award the contract as follows:

(i) [until July 1, 2006, in the Contract Weekly and in eMaryland Marketplace;

(ii) on and after July 1, 2006,] in eMaryland Marketplace; and

[(iii)] (II) in at least one newspaper of general circulation in:

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

2. if applicable, the county of the client population to be served by the agency under the contract.

(2) For purposes of this subsection:

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

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

(3) If, during the 30-day period established under paragraph (1) of this subsection, a person petitions the [interagency panel] **UNIT OF STATE GOVERNMENT CONDUCTING THE PROCUREMENT** for reconsideration of a determination of approval under subsection (b) of this section, the [interagency panel] **PROCUREMENT OFFICER** shall reconsider the determination of approval and make written findings affirming or reversing the determination of approval.

(j) In addition to publishing notice of the intent to award a contract based on an unsolicited proposal under subsection (i) of this section, not more than 30 days after the execution and approval of a procurement contract awarded under this section, a unit shall publish notice of the award [as follows:

(1) until July 1, 2006, in the Contract Weekly and in eMaryland Marketplace; and

(2) on and after July 1, 2006,] in eMaryland Marketplace.

(k) Repealed.

(l) The following agencies shall implement an educational outreach campaign on the availability of the unsolicited proposal method of procurement:

(1) the Department of Health and Mental Hygiene;

(2) the Department of Human Resources;

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

(4) the Department of Juvenile Services;

(5) the Department of Disabilities;

(6) the Department of Aging; [and]

(7) the Department of Business and Economic Development; AND

(8) THE MARYLAND STATE LOTTERY AGENCY.

(M) ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, THE AGENCIES DESIGNATED IN SUBSECTION (L) OF THIS SECTION SHALL REPORT TO THE BOARD OF PUBLIC WORKS ON THE STATUS OF THE EDUCATIONAL OUTREACH CAMPAIGN, INCLUDING ACTIVITIES CONDUCTED IN THE PREVIOUS FISCAL YEAR AND PLANS FOR FUTURE EDUCATIONAL OUTREACH ACTIVITIES.

(N) THE BOARD OF PUBLIC WORKS MAY ADOPT REGULATIONS TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

Chapter 482 of the Acts of 2002

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

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

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

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002. ~~It shall remain effective for a period of 6 11 years and, at the end of September 30, ~~2008~~ 2013, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.