

Chapter 707

(House Bill 1196)

AN ACT concerning

Participation in Procurement – Conflict of Interest – Exemption

FOR the purpose of ~~authorizing certain units of State government to solicit certain comments relating to certain specifications for State procurement of health, human, social, or educational services before issuing certain requests for proposals; authorizing a person that submits certain comments relating to a procurement to submit a proposal for the procurement under certain circumstances; providing that assisting in the drafting of certain specifications, invitations for bids, or requests for proposals does not include submitting certain oral comments on certain specifications; providing that assisting in the drafting of certain specifications, invitations for bids, or requests for proposals for certain procurements of health, human, social or educational services does not include certain comments solicited from certain persons as part of certain requests for information; requiring certain units that receive certain comments to retain certain written comments and certain records of certain oral comments; and generally relating to conflicts of interest and participation in procurement.~~

BY repealing and reenacting, with amendments,
Article – State Government
Section 15–508
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

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

Article – State Government

15–508.

(a) ~~[(An) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN~~ individual or a person that employs an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not:

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

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

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

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

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

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

(4) providing architectural and engineering services for:

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

(ii) the design of a construction project if:

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

2. A. the anticipated value of the procurement contract at the time of advertisement is at least \$2,500,000 and not more than \$100,000,000; or

B. regardless of the amount of the procurement contract, the payment to the individual or person for the design services does not exceed \$500,000; ~~or~~

(5) providing specifications for an unsolicited proposal procurement made in accordance with § 13–107.1 of the State Finance and Procurement Article; **OR**

(6) FOR A PROCUREMENT OF HEALTH, HUMAN, SOCIAL OR EDUCATIONAL SERVICES, COMMENTS SOLICITED FROM TWO OR MORE PERSONS AS PART OF A REQUEST FOR INFORMATION, INCLUDING WRITTEN OR ORAL COMMENTS ON A DRAFT SPECIFICATION, INVITATION FOR BIDS, OR REQUEST FOR PROPOSALS.

~~(c) (1) BEFORE A UNIT ISSUES A REQUEST FOR PROPOSALS FOR THE PROCUREMENT OF HEALTH, HUMAN, SOCIAL, OR EDUCATIONAL SERVICES, THE UNIT MAY SOLICIT WRITTEN COMMENTS FROM TWO OR MORE PERSONS RELATING TO DRAFT SPECIFICATIONS FOR THE PROCUREMENT.~~

~~(2) IF THE UNIT ENSURES THAT THE FINAL SPECIFICATIONS FOR THE PROCUREMENT COMPLY WITH § 13-205(A) OF THE STATE FINANCE AND PROCUREMENT ARTICLE, A PERSON THAT SUBMITS WRITTEN COMMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY SUBMIT A PROPOSAL FOR THE PROCUREMENT.~~

(c) A UNIT THAT RECEIVES COMMENTS AS DESCRIBED IN SUBSECTION (B)(2) AND (6) OF THIS SECTION SHALL RETAIN:

(1) ANY WRITTEN COMMENTS; AND

(2) A RECORD OF ANY ORAL COMMENTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 22, 2012.