

Chapter 341

(House Bill 283)

AN ACT concerning

Procurement – Prohibitions on Participation

FOR the purpose of providing that certain prohibitions on participation in procurement apply only for a certain period of time following the issuance of an invitation for bids or a request for proposals; providing that certain prohibitions on participation in procurement do not apply to certain invitations for bids or requests for proposals; and generally relating to the prohibitions on participation in procurement.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 13–212.1
 Annotated Code of Maryland
 (2015 Replacement Volume and 2016 Supplement)

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

Article – State Finance and Procurement

13–212.1.

(a) **[An] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, 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 a request for proposals, or a person that employs the individual **DURING THE PERIOD OF ASSISTANCE**, 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 unit or provided unsolicited;

(2) submitting written or oral comments on a specification prepared by an executive unit 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 this 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) 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, an invitation for bids, or a request for proposals.

(c) A unit that receives comments as described in subsection (b)(2) and (5) of this section shall retain:

(1) any written comments; and

(2) a record of any oral comments.

(D) (1) THE PROHIBITIONS ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION APPLY FROM THE DATE OF ISSUANCE OF THE FIRST INVITATION FOR BIDS OR REQUEST FOR PROPOSALS FOR WHICH THE SPECIFICATIONS WERE INITIALLY DRAFTED UNTIL THE LATER OF:

(I) 2 YEARS FROM THE DATE OF ISSUANCE; OR

(II) THE SELECTION OR AWARD OF A PROCUREMENT CONTRACT IN RESPONSE TO THE ISSUANCE OF THE INVITATION FOR BIDS OR REQUEST FOR

PROPOSALS OR A REISSUANCE OF THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS FOR WHICH THE SPECIFICATIONS WERE INITIALLY DRAFTED.

(2) THE PROHIBITIONS ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION DO NOT APPLY TO A SUBSEQUENT INVITATION FOR BIDS OR REQUEST FOR PROPOSALS FOR WHICH THE SPECIFICATIONS ARE REUSED AFTER THE INITIAL PROHIBITION IS NO LONGER APPLICABLE IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, April 18, 2017.