

Chapter 633

(House Bill 1557)

AN ACT concerning

Procurement – Architectural Services and Engineering Services – Reciprocal Preference

FOR the purpose of requiring a unit to give a certain preference under certain circumstances to a certain resident firm that is licensed or otherwise authorized to provide architectural services or engineering services in the State; requiring a certain nonresident firm to submit certain documentation concerning certain preferences to a unit at the request of the unit; requiring a unit to apply certain preferences to certain proposals in a certain manner; authorizing a unit that makes a certain determination of qualification for certain proposals to apply a preference to a certain proposal from a certain resident firm; prohibiting a unit from applying a certain preference if a certain certification is not submitted to the unit at a certain time; requiring the Board of Public Works to post and maintain certain information and adopt certain regulations; defining certain terms; and generally relating to procurement and reciprocal preferences.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–101(a), (b), (i), and (t) and 14–401(a)(1)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–401(a)(5)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY adding to
Article – State Finance and Procurement
Section 14–401.1
Annotated Code of Maryland
(2015 Replacement Volume and 2017 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

11–101.

(a) In this Division II the following words have the meanings indicated unless:

- (1) the context clearly requires a different meaning; or
- (2) a different definition is provided for a particular title or provision.

(b) (1) “Architectural services” means professional or creative work that:

(i) is performed in connection with the design and supervision of construction or landscaping; and

(ii) requires architectural education, training, and experience.

(2) “Architectural services” includes consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services that structural, civil, mechanical, and electrical engineers and other consultants provide.

(3) “Architectural services” does not include construction inspection services, services provided in connection with an energy performance contract, or structural, mechanical, plumbing, or electrical engineering.

(i) (1) “Engineering services” means professional or creative work that:

(i) is performed in connection with any utility, structure, building, machine, equipment, or process, including structural, mechanical, plumbing, electrical, geotechnical, and environmental engineering; and

(ii) requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences.

(2) “Engineering services” includes consultation, investigation, evaluation, planning, design, and inspection of construction to interpret and ensure compliance with specifications and design within the scope of inspection services.

(3) “Engineering services” does not include services provided in connection with an energy performance contract.

(t) (1) Except as provided in paragraph (3) of this subsection, “services” means:

(i) the labor, time, or effort of a contractor; and

(ii) any product or report necessarily associated with the rendering of a service.

(2) “Services” includes services provided by attorneys, accountants, physicians, consultants, and other professionals who are independent contractors.

(3) “Services” does not include:

- (i) construction related services;
- (ii) architectural services;
- (iii) engineering services; or
- (iv) energy performance contract services.

14-401.

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

(5) (I) “Services” [means services, architectural services, construction related services, engineering services, or energy performance contract services, all as defined] **HAS THE MEANING STATED** in § [11-101] **11-101(T)(1) AND (2)** of this article.

(II) NOTWITHSTANDING § 11-101(T)(3) OF THIS ARTICLE, “SERVICES” INCLUDES CONSTRUCTION RELATED SERVICES AND ENERGY PERFORMANCE CONTRACT SERVICES.

14-401.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “NONRESIDENT FIRM” MEANS A BUSINESS ENTITY THAT:

(I) HAS ONE OFFICE THAT:

- 1. IS A PRINCIPAL OFFICE FOR THE ENTITY; AND**
- 2. IS NOT LOCATED IN THE STATE; OR**

(II) FOR AN ENTITY THAT HAS OFFICES IN MULTIPLE STATES, HAS NOT HAD A PRINCIPAL OFFICE LOCATED IN THE STATE FOR AT LEAST 6 MONTHS IMMEDIATELY BEFORE THE DATE OF A REQUEST FOR PROPOSALS.

(3) “PREFERENCE” INCLUDES:

(I) A PERCENTAGE PREFERENCE;

(II) AN EMPLOYEE RESIDENCY REQUIREMENT; OR

(III) ANY OTHER PROVISION THAT FAVORS AN OFFEROR FROM ONE STATE TO THE DISADVANTAGE OF AN OFFEROR FROM ANOTHER STATE.

(4) (I) “PRINCIPAL OFFICE” MEANS A PRIMARY PLACE OF BUSINESS THAT IS STAFFED ON A REGULAR BASIS TO PROVIDE THE SERVICES THAT ARE REQUESTED BY A UNIT IN A REQUEST FOR PROPOSALS.

(II) “PRINCIPAL OFFICE” DOES NOT INCLUDE A SATELLITE OFFICE OR AN OFFICE THAT IS MINIMALLY STAFFED AND IS NOT OPEN ON A REGULAR BASIS TO PROVIDE THE SERVICES THAT ARE REQUESTED BY A UNIT IN A REQUEST FOR PROPOSALS.

(5) “REQUEST FOR PROPOSALS” MEANS A REQUEST FOR ARCHITECTURAL SERVICES OR ENGINEERING SERVICES THAT IS ISSUED IN ACCORDANCE WITH § 13–112 OF THIS ARTICLE.

(6) (I) “RESIDENT FIRM” MEANS A BUSINESS ENTITY THAT:

1. IS LICENSED OR OTHERWISE AUTHORIZED TO PROVIDE ARCHITECTURAL OR ENGINEERING SERVICES IN THE STATE; AND

2. A. FOR AN ENTITY THAT HAS ONE OFFICE, THE OFFICE IS LOCATED IN THE STATE; OR

B. FOR AN ENTITY THAT HAS OFFICES IN MULTIPLE STATES, HAS HAD A PRINCIPAL OFFICE LOCATED IN THE STATE FOR AT LEAST 6 MONTHS IMMEDIATELY BEFORE THE DATE OF A REQUEST FOR PROPOSALS.

(II) “RESIDENT FIRM” INCLUDES A JOINT VENTURE THAT:

1. WAS ENTERED INTO BEFORE THE DATE OF THE REQUEST FOR PROPOSALS FOR WHICH THE JOINT VENTURE SUBMITS A PROPOSAL; AND

2. INCLUDES ONE PARTY THAT:

A. HOLDS AT LEAST A 51% INTEREST IN THE JOINT VENTURE; AND

B. MEETS THE REQUIREMENTS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A UNIT SHALL APPLY A PREFERENCE TO A PROPOSAL FROM A RESIDENT FIRM IF:

(1) (I) A NONRESIDENT FIRM IS:

1. A RESPONSIBLE OFFEROR; AND

2. DETERMINED TO BE THE MOST QUALIFIED PERSON TO SUBMIT A PROPOSAL IN ACCORDANCE WITH § 13-112 OF THIS ARTICLE; AND

(II) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE NONRESIDENT FIRM IS LOCATED HAS A PREFERENCE THAT FAVORS AN OFFEROR FROM THAT STATE TO THE DISADVANTAGE OF AN OFFEROR FROM THIS STATE;

(2) A RESIDENT FIRM:

(I) IS A RESPONSIBLE OFFEROR; AND

(II) AT THE SAME TIME THAT IT SUBMITS THE PROPOSAL FOR WHICH THE PREFERENCE WOULD APPLY, CERTIFIES THAT IT MEETS THE REQUIREMENTS FOR A RESIDENT FIRM; AND

(3) THE PREFERENCE:

(I) IS THE SAME AS THE PREFERENCE REFERENCED IN ITEM (1)(II) OF THIS SUBSECTION; AND

(II) DOES NOT CONFLICT WITH A FEDERAL LAW OR GRANT AFFECTING THE PROCUREMENT CONTRACT.

(C) AT THE REQUEST OF A UNIT, A NONRESIDENT FIRM SHALL PROVIDE THE FOLLOWING DOCUMENTATION FOR THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE NONRESIDENT FIRM IS LOCATED:

(1) A COPY OF THE CURRENT STATUTE, RESOLUTION, POLICY, PROCEDURE, OR EXECUTIVE ORDER THAT ESTABLISHES A PREFERENCE THAT FAVORS AN OFFEROR FROM THAT STATE TO THE DISADVANTAGE OF AN OFFEROR FROM THIS STATE; OR

(2) A CERTIFICATION THAT THE OTHER STATE DOES NOT HAVE A PREFERENCE THAT FAVORS AN OFFEROR FROM THAT STATE TO THE DISADVANTAGE OF AN OFFEROR FROM THIS STATE.

(D) (1) IF A RESIDENT FIRM QUALIFIES FOR A PREFERENCE ESTABLISHED UNDER THIS SECTION AND FOR ANOTHER PREFERENCE ESTABLISHED UNDER THIS DIVISION II, THE UNIT:

(I) MAY NOT APPLY MORE THAN ONE PREFERENCE TO THE PROPOSAL FROM THE RESIDENT FIRM; AND

(II) SHALL APPLY THE PREFERENCE TO THE PROPOSAL FROM THE RESIDENT FIRM THAT IS MOST ADVANTAGEOUS TO THE RESIDENT FIRM.

(2) IF, WHEN MAKING A DETERMINATION OF QUALIFICATION UNDER § 13-112 OF THIS ARTICLE, A UNIT DETERMINES THAT A PROPOSAL FROM A RESIDENT FIRM AND A PROPOSAL FROM A NONRESIDENT FIRM ARE EQUALLY QUALIFIED, THE UNIT MAY APPLY A PREFERENCE TO THE PROPOSAL FROM THE RESIDENT FIRM.

(E) A UNIT MAY NOT APPLY A PREFERENCE TO A PROPOSAL SUBMITTED BY A RESIDENT FIRM IF THE RESIDENT FIRM DOES NOT SUBMIT THE CERTIFICATION REQUIRED UNDER SUBSECTION (B)(2)(II) OF THIS SECTION AT THE SAME TIME THAT IT SUBMITS THE PROPOSAL.

(F) THE BOARD SHALL:

(1) POST AND MAINTAIN A LIST OF ALL STATES WITH A PREFERENCE THAT FAVORS AN OFFEROR FROM THAT STATE TO THE DISADVANTAGE OF AN OFFEROR FROM THIS STATE; AND

(2) ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 15, 2018.