

Chapter 356

(House Bill 478)

AN ACT concerning

Procurement – Qualification Based Selection – Land Surveying Services

FOR the purpose of authorizing a procurement officer in the Department of General Services or the Department of Transportation to use qualification based selection as a method of procuring land surveying services; applying certain parameters, standards, and requirements of qualification based selection to land surveying services; and generally relating to qualification based selection for land surveying services.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 13–102 and 13–112
 Annotated Code of Maryland
 (2015 Replacement Volume and 2018 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

13–102.

(a) The following procurement methods are authorized at the procurement officer's discretion, where applicable:

- (1) competitive sealed bids under § 13–103 of this subtitle;
- (2) competitive sealed proposals under § 13–104 or § 13–105 of this subtitle;
- (3) noncompetitive negotiation under § 13–106 of this subtitle;
- (4) sole source procurement under § 13–107 of this subtitle;
- (5) emergency or expedited procurement under § 13–108 of this subtitle;
- (6) small procurement under § 13–109 of this subtitle;
- (7) an intergovernmental cooperative purchasing agreement under § 13–110 of this subtitle;

(8) auction bids under § 13–111 of this subtitle;

(9) architectural [and], engineering, **AND LAND SURVEYING** services qualification based selection under § 13–112 of this subtitle; or

(10) master contracting under § 13–113 of this subtitle.

(b) (1) In awarding a procurement contract for human, social, cultural, or educational service, the preferred method is by competitive sealed proposals under § 13–104 of this subtitle.

(2) In awarding a procurement contract for a lease of real property, the preferred method is by competitive sealed proposals under § 13–105 of this subtitle.

(3) Procurement under an intergovernmental cooperative purchasing agreement is appropriate in situations where the State is expected to achieve a better price as the result of economies of scale or to otherwise benefit by purchasing in cooperation with another governmental entity.

13–112.

(a) In this section, “Department” means the Department of General Services or the Department of Transportation.

(b) Qualification based selection shall only be used by the Department if the procurement:

(1) is for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES**;

(2) is made on a competitive basis;

(3) includes an evaluation of the technical proposals and qualifications of at least two persons; and

(4) the services cannot be provided feasibly and economically by existing in-house resources.

(c) (1) Whenever a procurement is based on qualification based selection, a procurement officer shall seek proposals by issuing a request for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES**.

(2) A request for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** shall include a statement:

(i) describing generally the architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** that are the subject of the procurement; and

(ii) indicating how an interested person may receive information about the procurement, including a comprehensive description of the nature and scope of the architectural services [or], engineering services, **OR LAND SURVEYING SERVICES**.

(d) The Department shall publish reasonable and timely notice of a request for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** in eMaryland Marketplace.

(e) The Department shall:

(1) evaluate the technical proposals and qualifications of the persons submitting the proposals; and

(2) determine an order of priority based on those evaluations.

(f) (1) From the results of the selection process under this section, the Department shall:

(i) begin negotiations with the most qualified persons; and

(ii) try to negotiate a procurement contract with that person at a rate of compensation that is fair, competitive, and reasonable.

(2) In determining the rate of compensation under this subsection, the Department shall:

(i) consider the scope and complexity of the architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** required; and

(ii) conduct a detailed analysis of the cost of those services.

(3) (i) In determining the rate of compensation under this subsection, the Department of Transportation also shall comply with limits on costs reimbursement, including overhead limits established by the Department.

(ii) In setting the limits under subparagraph (i) of this paragraph, the Department of Transportation shall consider the goal of the selection process as well as the reasonable cost of architectural services [or], engineering services, **OR LAND SURVEYING SERVICES**.

(g) If the Department is unable to negotiate a satisfactory procurement contract at a rate of compensation that is fair, competitive, and reasonable, it shall:

(1) terminate negotiations with the most qualified person; and

(2) negotiate in the same manner with the next most qualified person and, if necessary, continue negotiations in accordance with the procedures under this section until the agency reaches an agreement.

(h) After obtaining any approval required by law, the procurement officer shall award a procurement contract to the most qualified person with whom an agreement was reached on compensation that is fair, competitive, and reasonable.

(i) Not more than 30 days after the execution and approval of a procurement contract awarded under this section, the Department shall publish in eMaryland Marketplace notice of the award.

(j) All documents relating to the award of a procurement contract are to be made available to the public, including:

(1) technical resumes;

(2) technical proposals;

(3) the procurement contract;

(4) scope of services;

(5) programs/projects;

(6) staff reports;

(7) internal worksheets; and

(8) all other information relating to the negotiation and award of a procurement contract under this section.

(k) (1) The Department shall waive the requirements in subsections (b), (e), (f), (g), and (j) of this section if:

(i) the Department determines that:

1. the architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** cannot be defined so completely as to carry out those requirements; or

2. the specifications require architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** that are available only from a bona fide single source or a proprietary product or process;

(ii) the Governor declares an emergency;

(iii) after a natural disaster, public health and safety are endangered;

or

(iv) on the recommendation of the Secretary of the Department and a finding by the Governor that extraordinary circumstances exist, the Board of Public Works determines that:

1. for a particular project, urgent circumstances require the selection of a contractor on an expedited basis;

2. expedited selection best serves the public interest; and

3. the need for an expedited selection outweighs the benefits of carrying out those requirements.

(2) A waiver and the reasons for it shall be documented and:

(i) immediately reported to eMaryland Marketplace for publication;

and

(ii) reported to the Legislative Policy Committee within 30 days after the waiver occurs.

(1) (1) The Department may not award a procurement contract to a person under this subtitle unless:

(i) the person submits:

1. an affidavit of noncollusion; and

2. a price quotation; and

(ii) for a procurement contract costing more than \$200,000, the person has executed a truth-in-negotiation certificate.

(2) The truth-in-negotiation certificate shall state that:

(i) wage rates and other factual unit costs supporting wages are accurate, complete, and current as of the time of contracting; and

(ii) the original price of the procurement contract and any additions to the procurement contract will be adjusted to exclude any significant price increase if the

Department determines that the price increase is due to wage rates or other factual unit costs that were inaccurate, incomplete, or not current as of the time of contracting.

(3) An adjustment to the procurement contract shall be made within 1 year after the procurement contract is completed.

(m) The Department may not award a procurement contract for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** that:

(1) is a cost-plus-a-percentage-of-cost contract; or

(2) includes fee schedules that are based on a percentage of construction costs.

(n) (1) The State may postaudit the rates of contractors performing architectural services [or], engineering services, **OR LAND SURVEYING SERVICES**.

(2) All rates used in a cost-plus-fixed-fee procurement contract shall be verified by postaudit if:

(i) the compensation is more than \$50,000 and the procurement contract involves a unit other than a transportation unit; and

(ii) the compensation is more than \$25,000 and the procurement contract involves a transportation unit.

(3) On request by a procuring authority of any political subdivision of the State that is considering an architect [or], **AN** engineer, **OR A LAND SURVEYOR** for a specific project, any State audit of the architect [or], engineer, **OR LAND SURVEYOR** shall be made available.

(o) (1) The Department may terminate without liability a procurement contract for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** if:

(i) there has been a conviction of a crime arising out of or in connection with the procurement contract or any payment to be made under the procurement contract; or

(ii) there has been a breach or violation of any provision of this subtitle.

(2) Subject to subsection (a) of this section, the Department may deduct from the procurement contract price or otherwise recover the full amount of any fee, commission, gift, percentage, or other consideration paid in violation of this subtitle.

(3) If a procurement contract is terminated under this section, the contractor:

(i) is entitled only to the earned value of the work completed as of the date of termination, plus termination costs;

(ii) is liable for any costs incurred for completion of the work over the maximum amount payable to the contractor under the procurement contract; and

(iii) shall refund all profits or fixed fees realized under the procurement contract.

(4) (i) The provisions of this section are in addition to any other right or remedy allowed by law.

(ii) By carrying out this section, the Department does not waive any other right or remedy provided by law.

(p) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 10 years or both.

(q) (1) The Department of General Services and the Department of Transportation shall adopt regulations that provide substantially similar procedures to carry out this section.

(2) The procedures of the Department shall ensure that a recommendation to the Board of Public Works for the award of a procurement contract for architectural services [or], engineering services, **OR LAND SURVEYING SERVICES** costing over \$200,000 is made on a competitive basis and includes an evaluation of the technical proposals and qualifications of at least two persons.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 30, 2019.