

HOUSE BILL 1196

P2

2lr2949

By: **Delegates Ready and Pena-Melnyk**

Introduced and read first time: February 10, 2012

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2012

CHAPTER _____

1 AN ACT concerning

2 **Participation in Procurement – Conflict of Interest – Exemption**

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

18 BY repealing and reenacting, with amendments,
19 Article – State Government
20 Section 15–508
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – State Government**

4 15–508.

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

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

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

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

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

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

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

25 (4) providing architectural and engineering services for:

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

28 (ii) the design of a construction project if:

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

31 2. A. the anticipated value of the procurement
32 contract at the time of advertisement is at least \$2,500,000 and not more than
33 \$100,000,000; or

1 B. regardless of the amount of the procurement contract,
2 the payment to the individual or person for the design services does not exceed
3 \$500,000; ~~or~~

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

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

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

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

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

22 **(1) ANY WRITTEN COMMENTS; AND**

23 **(2) A RECORD OF ANY ORAL COMMENTS.**

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