

# HOUSE BILL 478

P2

9lr1553

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By: **Delegate Kelly**

Introduced and read first time: February 1, 2019

Assigned to: Health and Government Operations

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Committee Report: Favorable

House action: Adopted

Read second time: March 5, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Qualification Based Selection – Land Surveying Services**

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

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

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

16 **Article – State Finance and Procurement**

17 13–102.

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

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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 (1) competitive sealed bids under § 13–103 of this subtitle;
- 2 (2) competitive sealed proposals under § 13–104 or § 13–105 of this  
3 subtitle;
- 4 (3) noncompetitive negotiation under § 13–106 of this subtitle;
- 5 (4) sole source procurement under § 13–107 of this subtitle;
- 6 (5) emergency or expedited procurement under § 13–108 of this subtitle;
- 7 (6) small procurement under § 13–109 of this subtitle;
- 8 (7) an intergovernmental cooperative purchasing agreement under §  
9 13–110 of this subtitle;
- 10 (8) auction bids under § 13–111 of this subtitle;
- 11 (9) architectural [and], engineering, **AND LAND SURVEYING** services  
12 qualification based selection under § 13–112 of this subtitle; or
- 13 (10) master contracting under § 13–113 of this subtitle.

14 (b) (1) In awarding a procurement contract for human, social, cultural, or  
15 educational service, the preferred method is by competitive sealed proposals under §  
16 13–104 of this subtitle.

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

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

23 13–112.

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

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

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

30 (2) is made on a competitive basis;

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

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

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

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

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

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

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

18 (e) The Department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) technical resumes;

24 (2) technical proposals;

25 (3) the procurement contract;

26 (4) scope of services;

27 (5) programs/projects;

28 (6) staff reports;

29 (7) internal worksheets; and

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

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

3 (i) the Department determines that:

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

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

10 (ii) the Governor declares an emergency;

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

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

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

18 2. expedited selection best serves the public interest; and

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

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

22 (i) immediately reported to eMaryland Marketplace for publication;  
23 and

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

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

28 (i) the person submits:

29 1. an affidavit of noncollusion; and

30 2. a price quotation; and

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

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

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

6 (ii) the original price of the procurement contract and any additions  
7 to the procurement contract will be adjusted to exclude any significant price increase if the  
8 Department determines that the price increase is due to wage rates or other factual unit  
9 costs that were inaccurate, incomplete, or not current as of the time of contracting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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