

ETHICS

Maryland's ethics law prohibits acceptance of gifts of any type by the Procurement Team or any one member. Furthermore, State employees may not become obligated to any Vendor and shall not participate in any State transaction, from which they will directly or indirectly benefit. This includes employment opportunities. Procurement regulations require a contract provision that states:

No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

There is no prohibition that precludes the Department from contracting with a firm to assist with, or even write an entire, Invitation for Bids (IFB) or Request for Proposals (RFP). Some Departments do this routinely. There is, however, a law barring an individual or entity that assisted in the drafting of a solicitation from competing in that procurement. At Md. Code Ann., State Gov't § 15-508, we find that:

In general-An individual or a person that employs 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 request for proposals 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.*

Solicitations and contracts for the drafting of an IFB or RFP will contain language that alerts potential bidders/offers of this prohibition. The solicitation will also include a conflict of interest affidavit. In Md. Code Ann., State Finance and Procurement § 13-212, the law requires that:

Each invitation for bids or request for proposals for a contract that will involve the selection of a consultant who is to assist the unit in the formation, award, or execution of any State contract shall require that a bidder or offeror provide to the unit an affidavit that discloses any actual or potential conflict of interest of which the bidder or offeror knows, or can reasonably be expected to know, in accordance with regulations¹ adopted under this section.

¹ The regulations referred to are State Procurement Regulations at COMAR 21.05.08.08.

When contracting for assistance in the formation, award or execution of a State contract, the solicitation/contract for such services will provide a sample affidavit for the potential contractor to sign.

There are certain exemptions:

Exemptions.- ... 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 agency or provided on an unsolicited basis;*
- (2) Submitting written comments on a specification prepared by an agency 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 the State Finance and Procurement Article; or*
- (4) Providing architectural and engineering services for programming, master planning, or other project planning services.*
- (5) Providing specifications for an unsolicited proposal procurement made in accordance with § 13-107.1 of the State Finance and Procurement Article.*

The Maryland State Ethics Commission's website is: <http://ethics.gov.state.md.us/>. There you will find formal advisory opinions that may address your situation. If not, you may contact the Commission at 410-974-2068 and explain your situation to them. Often they can give you informal guidelines to help steer you. The penalties for knowingly violating the State Ethics Law can be quite severe including debarment.