HB 53

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 53 (Delegate B. Robinson)
Health and Government Operations

State Procurement - Use of State Residents and Businesses

This bill requires State procurement units to adopt regulations that require each unit to determine, before awarding a procurement contract, whether a resident bidder or offeror can carry out the contract. The regulations must also require each unit to strongly encourage nonresident bidders or offerors that are awarded a State contract to employ State residents and businesses to the greatest extent practicable in carrying out the contract.

Fiscal Summary

State Effect: Potential increase in State procurement costs (all funds) to the extent that the bill discourages nonresident businesses from bidding on State contracts. Such an effect would narrow the bidding pool and reduce competition for State contracts, which could increase the cost of those contracts. Procurement units can develop the necessary regulations with existing budgeted resources; however, determining whether a resident bidder who did not submit the best offer can carry out the contract will lead to administrative inefficiencies in the procurement process.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law/Background: Preference for State contracts can be given to resident bidders or offerors only if a nonresident bidder or offeror with the lowest responsive bid or most advantageous proposal is from a state that gives preference to its resident bidders or offerors. The State does not systematically track the residency of State contractors. However, the Department of General Services advises that 9,211 of the 25,516 (36.1%) businesses registered with eMaryland Marketplace to bid on State contracts are not located in the State.

For procurements that use competitive sealed proposals and are valued at more than $25,000, procurement officers may include an economic benefits factor in evaluating proposals that are submitted. The economic benefits factor may include an assessment of the economic benefits to the State, the offeror's intended procurements from Maryland subcontractors and suppliers, the number of jobs generated for Maryland residents, and other similar factors. For procurements that use a point system to evaluate proposals, up to 10% of total points awarded may be for the economic benefits factor.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement law. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill's requirements.

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery and Gaming Control Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;
- State Retirement and Pension System;
- College Savings Plans of Maryland; and
- Chesapeake Bay Trust.

According to the National Association of State Procurement Officials, 25 states provide a legal preference for in-state bidders or products, including 17 in which the preference is mandatory. Thirty-five states have reciprocal preference laws similar to Maryland's, including all states in the mid-Atlantic region, except Delaware. It is not clear whether this bill would trigger the reciprocal preferences in other states as it does not specifically require that in-state businesses be given preference. However, it could be interpreted by some other states, and some nonresident businesses, as giving preference to resident businesses.

Given the regional nature of the Maryland economy, nonresident firms often work on Maryland projects, and Maryland firms often work on projects in neighboring states. For instance, a 2011 analysis of the Dulles Metro Rail project in Virginia conducted by the Metropolitan Washington Airports Authority found that one-half of the workers on the project were Maryland residents, outnumbering Virginia residents on the project.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, University System of Maryland, National Association of State Procurement Officials, Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2013
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