

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 330
Appropriations

(Delegate Jones, *et al.*)

County Boards of Education - Procurements for Construction or Repair of
School Projects

This bill requires procurements by local school boards for construction and repairs valued at more than \$25,000 to use the competitive bidding process required for most other types of procurement. The bill also defines commodities and goods that are subject to competitive bidding by local school boards under certain provisions of current law.

The bill takes effect July 1, 2016, and applies only prospectively to contracts entered into on or after that date.

Fiscal Summary

State Effect: None. The bill applies only to local school boards.

Local Effect: Local school boards can comply with the bill's requirements with existing resources but, to the extent that the bill bars them from using intergovernmental purchasing agreements (IPAs) for some capital projects, they may experience operational inefficiencies and increased costs in some instances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Construction" is defined as the process of building, altering, repairing, improving, or demolishing any structure or building or making any other improvements to real property. It includes any major work necessary to repair, prevent damage to, or sustain existing components of an improvement to real property. "Improvement" is defined as the

construction, maintenance, and repair of any building, structure, or other public work. “Commodities” are defined as an item of purchase, including office goods and materials, food, printed material, copied material, energy, and other items needed to support normal operations of a public school system. “Goods” means tangible or movable personal property other than money.

Current Law: State law specifies processes that boards of education must follow when procuring school buildings, improvements, supplies, or equipment valued at more than \$25,000. “Construction” is not specifically included under current law. “Commodities” and “goods” are included in current law but are not defined. If the State raises the threshold for small procurements under State procurement law above \$25,000, then the new threshold applies to board of education procurements. The procedures do not apply to contracts for books or other instructional materials, emergency repairs, or most goods or commodities purchased through IPAs if the lead party follows public bidding procedures.

The required procurement processes require that at least two weeks before filing bids for a school building, improvement, supplies, or equipment valued at more than \$25,000, a board of education must advertise for bids in a medium accessible to the general public, including (1) a newspaper of general circulation in the region; (2) the *Maryland Contract Weekly* or comparable State publication; or (3) an electronic posting on a bid board and physical posting on the local school system bid board. Statute includes guidelines for the specifications included in the bid requests.

Contracts for school buildings, improvements, supplies, or equipment must be awarded to the lowest responsive bidder who conforms to the bid specifications, with consideration given to:

- the quantities involved;
- the time required for delivery;
- the purpose for which required;
- the competency and responsibility of the bidder;
- the ability of the bidder to perform satisfactory service; and
- the plan for utilization of minority contractors.

The county board may reject any and all bids and readvertise for other bids.

Board of Public Works regulations related to school construction require local school systems to use competitive sealed bidding in procuring school construction contracts, subject to specified exceptions. One such exception is that they may use specified forms of intergovernmental cooperative purchasing if they determine that it (1) will provide cost

benefits, promote administrative efficiencies, or promote governmental cooperation and (2) is not intended to avoid competition.

Background: Since 2005, Baltimore County Public Schools (BCPS) has used the Pennsylvania Education Joint Purchasing Cooperative, an IPA, to procure roof replacement services for its schools. According to BCPS, use of intergovernmental cooperative purchasing has saved time and money spent on the procurement process, accelerated project completion timelines, and improved work quality.

In 2011, GAF Materials Corporation challenged in court the authority of the Baltimore County Board of Education to procure roof repair services through an IPA. In particular, it claimed that roof repair does not qualify as a “good” or “commodity,” which are authorized to be purchased through IPAs. The case reached the Maryland Court of Appeals, which in 2012 upheld the board’s authority in [*Building Materials Corporation of America d/b/a GAF Materials Corporation v. Board of Education of Baltimore County*](#): “When viewed in the context of the entire education law and regulations promulgated under that law, the competitive bidding statute does not bar the Board of Education from using its membership in an intergovernmental purchasing consortium for the procurement of roofing repair services.”

Small Business Effect: To the extent that small construction businesses do not participate in IPAs, they may benefit from increased opportunities to bid on local school board construction projects.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Maryland Association of Boards of Education, Department of General Services, Board of Public Works, Department of Legislative Services

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