HB 734

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 734 (Delegate B. Robinson, *et al.*)
Health and Government Operations

State Procurement - Preference for Resident Bidders or Offerors

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This bill requires State agencies to award a 10% preference to resident bidders or offerors when procuring goods and services under specified circumstances.

Fiscal Summary

State Effect: State expenditures (all funds) for procurement increase, potentially by 10% on individual contracts, to award resident preferences on contracts for which the lowest responsive bid or offer was made by a responsible bidder or offeror who is not a resident of the State. To the extent the bill dissuades nonresident bidders and offerors from participating in State procurement, costs may increase further due to reduced competition for State contracts, which has been shown to increase costs. Because the bill applies to services associated with capital projects, it may increase capital costs as well. Even so, it is assumed that any such increase simply delays the projects (or other projects) due to higher costs rather than increasing the amount of capital funding provided each year. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: "Services" means services, architectural services, construction-related services, engineering services, or energy performance contract services as defined in current law.

"Resident bidder or offeror" means a bidder or offeror whose principal office is in the State.

"Percentage preference" means the percent of the lowest responsive bid or offer submitted by a responsible bidder or offeror who is not a resident of the State by which a responsive bid or offer by a resident bidder or offeror may exceed the lowest bid or offer and be awarded a procurement contract for goods or services.

The percentage preference may only be applied when:

- the resident bidder or offeror is a responsible bidder or offeror;
- a nonresident responsible bidder or offeror submits the lowest responsive bid or offer; and
- a preference does not conflict with a federal law or grant affecting the procurement contract.

Current Law/Background: State agencies may give a preference to a bidder or offeror from the State only if (1) the resident bidder or offeror is a responsible bidder; (2) the lowest bid is by a bidder or offeror from another state; and (3) the state in which the nonresident bidder or offeror is located gives a preference to its residents. Several surrounding states have similar reciprocal preference language in their statutes, so any preference given by a State agency to a resident bidder over an out-of-state bidder would likely trigger reciprocal preferences in neighboring states.

A "responsive bid" is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids; "responsive offer" is not a defined term in State law. A "responsible bidder or offeror" is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

Small Business Effect: Maryland-based firms are given a significant advantage in being awarded procurement contracts from State agencies. However, they are likely severely disadvantaged from being awarded contracts in other states, including some neighboring states.

According to published data by the state of Virginia, more than 1,500 Maryland-based businesses receive payments under procurement contracts with Virginia on an annual basis. In fiscal 2015, total payments by the state of Virginia to Maryland-based businesses totaled $196.2 million. As Virginia has a reciprocal preference provision similar to Maryland's, the awarding of a resident preference by Maryland agencies would trigger Virginia's reciprocal preference, which would seriously hamper the ability of Maryland-based firms to do business in Virginia. Similar reciprocal preferences would be triggered in other neighboring states, further damaging the ability of Maryland-based firms to compete in those states as well.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): University System of Maryland, Department of Budget and Management, Department of General Services, Department of Public Safety and Correctional Services, Board of Public Works, Maryland Department of Transportation, Virginia Department of General Services, Department of Legislative Services

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