

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1123 (Senator Conway)
Education, Health, and Environmental Affairs

State Lottery and Gaming Control Agency - Procurements

This bill requires the State Lottery and Gaming Control Agency (SLGCA) to award contracts procured using either competitive sealed bids or competitive sealed proposals to the responsible bidder or offeror who submits the lowest responsive bid or proposal.

Fiscal Summary

State Effect: Potential minimal decrease in general and special fund expenditures by SLGCA to the extent that the bill results in contracts being awarded solely on the basis of lowest price. No direct effect on general or special fund revenues, but any deterioration in the quality of goods and services procured by SLGCA may have an indirect effect on lottery and gaming sales and net revenues. Any such effect cannot be reliably quantified in advance.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: In general, all procurement by State agencies must be by competitive sealed bidding unless an alternative method is specifically authorized. However, competitive sealed proposals is the preferred method for the procurement of human, social, cultural, or educational services. Competitive sealed proposals may also be used if:

- the procurement officer, with the approval of the head of the agency, determines that specifications cannot be prepared that allow an award based on the lowest bid

price; the lowest evaluated bid price; or, for contracts that generate revenue for the State, the bid most favorable to the State; or

- the head of the agency determines that the need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors competitive sealed bids and that the use of competitive sealed bidding is not practicable or not advantageous to the State for the specific procurement contract.

For competitive sealed bidding, contract awards are made to the responsible bidder who submits a responsive bid that is (1) the lowest bid price; (2) the lowest evaluated bid price, if the invitation for bids so provides; or (3) for bids that generate revenue for the State, the bid that is most favorable to the State. “Evaluated bid price” is defined as the price of a bid that is adjusted in accordance with objective measurable criteria, which allows the State to compare the economy, effectiveness, or value of the subject of the bids.

For competitive sealed proposals, contract awards are made to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State considering the evaluation factors set forth in the request for proposals.

“Responsible bidder or offeror” is defined as a person who (1) has the capability in all respects to perform fully the requirements of a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

A “responsive bid” is a bid that conforms in all material respects to the invitation for bids.

State Fiscal Effect: Although State procurement law expresses a preference for competitive sealed bidding, which generally results in the award of a contract to the responsible bidder who submits a responsive bid based largely on the lowest bid price, it also includes multiple provisions that allow procurement awards to be awarded based on other factors. For instance, with competitive sealed bidding, procurement officers can award contracts based on evaluated bid prices, which allows for a comparison of the effectiveness and value of bids received. Similarly, competitive sealed proposals allow contracts to be awarded based, in part, on technical factors aside from price.

To the extent that the bill restricts the authority of SLGCA to consider factors other than price in the award of procurement contracts, it could affect the quality of goods and services procured by SLGCA while also potentially reducing general and special fund expenditures for the agency. With respect to revenues, any deterioration in the quality of goods and services purchased by SLGCA could potentially affect lottery and gaming sales and net general and special fund revenues, but any such effect is indirect and cannot be reliably quantified in advance.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services; Board of Public Works; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

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