

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
State Procurement Regulations**

(DLS Control No. 14-047)

Overview and Legal and Fiscal Impact

This proposed regulation exempts purchases from a local jurisdiction intergovernmental cooperative purchasing agreement from a provision that prohibits certain agencies from purchasing certain items from an alternate source when the item is available through the Department of General Services purchase program or certain other contracts under certain circumstances. The regulation also increases the dollar limit for all items purchased from an alternate source from \$5,000 to \$10,000.

This regulation presents no legal issues of concern.

The regulation may result in a minimal decrease in State expenditures for supplies and commodities. There is no effect on local government agencies.

Regulation of COMAR Affected

State Procurement Regulations:

State Procurement Organization: Department of General Services: COMAR 21.02.05.04

Legal Analysis

Summary of Regulation

This proposed regulation amends COMAR 21.02.05.04. The amendment adds an exception to a provision that prohibits a State agency from purchasing from an alternate source an item that is available either through the department's regularly scheduled purchase program or through a term requirements or indefinite quantity contract unless the cost of the item from the alternate source would be less than the cost of the item on a schedule that is the result of an intergovernmental agreement and the price does not exceed \$1000. The newly added exception authorizes purchases from an alternate source if the purchase is made through a local jurisdiction intergovernmental cooperative purchasing agreement. The proposed regulation also increases the total cost per year for all items purchased from alternate vendors from \$5,000 to \$10,000 for each agency.

Legal Issue

This regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-204, 12-101, 12-107(b)(3), 12-108, and 13-108(a)(1) of the State Finance and Procurement Article as legal authority for this regulation. This authority is overbroad. More specific authority is found at §§ 4-204, 12-107(b)(3), and 12-108 of the State Finance and Procurement Article.

Section 4-204 of the State Finance and Procurement Article authorizes the Secretary of General Services to adopt regulations for the department and to review and approve, disapprove, or revise regulations of any unit of the department. Section 12-107(b)(3) authorizes the department to engage in or control the procurement of supplies excluding insurance, information processing equipment, and motor vehicle leases. Section 12-108 requires each primary procurement unit to adopt regulations to carry out Division II of the State Finance and Procurement Article, which relates to general procurement law.

Except as noted above, this legal authority is complete and correct. The regulation complies with the legislative intent of the law.

Fiscal Analysis

The regulation may result in a minimal decrease in State expenditures for supplies and commodities. There is no effect on local government agencies.

Agency Estimate of Projected Fiscal Impact

The department indicates that the regulation has no fiscal effect on State agencies. The Department of Legislative Services disagrees but acknowledges that any fiscal effect is likely to be minimal. By raising the maximum threshold that an agency may spend on supplies and commodities from alternate vendors (*i.e.*, those that do not have contracts with the State to provide supplies and commodities) from \$5,000 to \$10,000 annually, agencies have expanded opportunities to find cost savings for supplies and commodities from alternate vendors. Under current regulations, which are preserved, agencies may only purchase from alternate vendors if they can show a savings on total cost and if the cost of the item does not exceed \$1,000. Therefore, the regulation allows agencies to spend up to \$5,000 more for lower-cost supplies and commodities from alternate vendors.

Impact on Budget

The regulation may result in minimal reductions in State expenditures for supplies and commodities. There is no effect on the State capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs that the effect is likely minimal. Small businesses that sell supplies and commodities at prices below current levels charged in State contracts may experience increased business due to the increase in the dollar threshold for total purchases from alternate vendors. However, the overall annual threshold for

purchases from alternate vendors remains fairly low (\$10,000), so any benefit to small businesses is likely minimal.

Contact Information

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