

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1282 (Delegate Poole, *et al.*)
Commerce and Government Matters

State Procurement Process - Competitive Sealed Proposals

This bill provides that in the evaluation of proposals for State procurement contracts based on competitive sealed proposals, “past performance” must be given at least the same weight as the highest other noncost evaluation factor. Past performance is defined as performance by a responsible offeror under any other contracts involving the same or similar products, services, or technology to that required under a proposal. Past performance of an offeror includes past performance of any subcontractors. The Board of Public Works must establish a program for the evaluation and tracking of past performance.

The bill establishes competitive sealed proposals as the preferred method for awarding a procurement contract that requires the development of computer hardware or software technology. The bill specifies certain procurement requirements for such contracts that are estimated to exceed \$100,000. The requirements include designating a systems analyst to have final decision authority concerning technical aspects and requiring an offeror to demonstrate a prototype of any computer hardware or software that would be required under the contract.

Fiscal Summary

State Effect: Indeterminate effect on expenditures due to the use of past performance as a major evaluation factor and due to the requirements concerning certain computer contracts. Indeterminate increase in expenditures for the Board of Public Works to evaluate and track past performance. Revenues would not be affected.

Local Effect: None.

Small Business Effect: Potential meaningful impact on small businesses as discussed below.

Fiscal Analysis

State Expenditures: To the extent that requiring past performance as a major factor in

evaluating proposals results in more qualified contractors being awarded contracts, the State would realize savings by obtaining the best value. Any savings would be offset to some extent by any increases in time and effort by agencies in order to comply with the additional requirements of the bill. It is noted that agencies currently may establish some form of past performance as one evaluation criteria of competitive sealed proposals and may specify its rank among other criteria.

Similarly, to the extent that (1) using the competitive sealed proposal method for contracts that require the development of computer hardware or software; (2) requiring the use of a “systems analyst” for certain procurements; and (3) requiring vendors to develop prototypes results in more qualified vendors being awarded contracts, the State would realize savings by obtaining the best value. Any savings would be offset to some extent by any increases in time and effort by agencies in order to comply with the specific requirements of the bill. In addition, the expense associated with vendors developing prototypes could result in fewer vendors submitting proposals and increased contract costs as vendors attempt to recover these expenses. The net effect on the State cannot be determined at this time. It is noted that under current practice, the competitive sealed proposal method is often used for major computer contracts. In addition, there may be a lead technical advisor and agencies may require the development of a prototype of an item, when appropriate.

The costs of evaluating and tracking past performance by the Board of Public Works (BPW) include (1) costs of developing the program, including computer software that may be required; (2) costs to update and maintain the data; and (3) costs to each procurement unit of submitting the required data to BPW. BPW advises that it would be necessary to hire one Administrator I and one Secretary III at a cost of about \$60,000 per year, including salaries, fringe benefits, and operating costs. In addition, BPW advises that eight computers would need to be upgraded at a cost of about \$40,000. Thus, BPW estimates the cost for the program in the first year would be \$100,000. BPW advises that in future years costs could increase to \$250,000 in order to develop an interactive system that would allow agencies to enter data directly in a secure manner.

Fiscal Services advises that the cost of evaluating and tracking past performance depends on the quality and extent of the program. For illustrative purposes only, there were about 290,000 procurement contracts in the State in fiscal 1995, the latest year for which such information is available. It is not known how many of those used the competitive sealed proposal procurement method or how many contractors and subcontractors were involved with those contracts.

Small Business Effect: To the extent small businesses have a less extensive record of past performance, emphasizing past performance as an evaluation factor when competitive sealed proposals are used could have a negative effect on the ability of small businesses to compete

for those State contracts. In addition, the cost of developing a prototype could prevent small businesses with limited resources from entering a proposal in some cases.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of Transportation (Motor Vehicle Administration, State Highway Administration); University of Maryland System; Department of Fiscal Services

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