

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 383 (Delegates Busch and Kach)
(Task Force on Regulatory Reform)
Commerce and Government Matters

Procurement - Unsolicited Proposals

This bill authorizes a State procurement unit to award a contract for goods or services based on an unsolicited proposal. The Board of Public Works must approve the contract in writing before it is executed, and the procurement unit must certify certain facts to the board to obtain approval. The bill also exempts contracts drafted for an unsolicited proposal from certain restrictions on bidding by an individual assisting a procurement unit in drafting certain procurement documents.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful. To the extent small businesses can obtain contracts faster or easier with the State for innovative technologies, there is the potential for increased business and revenues.

Analysis

Bill Summary: The bill provides that a procurement unit may contract for goods or services based on an unsolicited proposal if there is a State need for the goods and services and the procurement unit certifies to the Board of Public Works that: (1) the proposal is innovative; (2) the goods and services do not closely resemble goods and services available otherwise; (3) the existing stated facts and circumstances make the use

of a sole source, competitive sealed bid, or competitive sealed procurement procedure ineffective or not cost-effective. The Board of Public Works must approve the contract before contract execution, and the contract cannot be awarded for more than two years. For contracts based on unsolicited proposals, the restrictions on bid participation by individuals assisting in preparation of specifications, requests for proposals, and other bid materials do not apply.

Current Law: There are no specific provisions for contracts based on unsolicited proposals. An unsolicited contract may qualify as a sole source contract, but the procurement would be subject to the restrictions on bid participation by individuals assisting in the preparation of certain bid documents. Specifically, under the conflict of interest provisions of State Ethics Law, an individual cannot bid if the individual assisted the procurement unit in developing the specifications, an invitation for bids or a request for proposals, or the selection or award in response to an invitation for bids or request for proposals.

Background: Joint Resolution 9 of the Acts of 1999 established the Task Force on Regulatory Reform to examine:

- the existing process for the review of regulations under the Regulatory Review and Evaluation Act (RREA); and
- at least two titles of the Code of Maryland Regulations (COMAR) for the purpose of looking at ways to:
 - eliminate obsolete language;
 - apply a cost/benefit analysis and small business impact statement; and
 - identify regulatory requirements that may exceed federal standards.

The task force recommended two pieces of legislation as a result of its work:

- altering the RREA process so members of the public and other State agencies are involved in the review of an agency's existing regulations; and
- clarifying the law regarding State contracts for unsolicited proposals for innovative goods and services.

Testimony to the task force suggested a number of regulations for the task force to review, and the list was narrowed down to two: (1) the DHMH regulations on food and drink transportation; and (2) the Board of Public Works regulations on unsolicited vendor offers and how these regulations interact with sole source procurement procedures.

The researcher for the task force found that: (1) the regulations on unsolicited proposals provided no clear guidelines for the submission and evaluation of unsolicited proposals;

(2) the regulatory language is vague and conflicting; (3) the regulations and existing statutory language can be read to counteract each other; (4) the interplay between the regulations for unsolicited proposals and those for sole source procurements leave uncertainty regarding the practical applicability of the regulations for unsolicited proposals; and (5) barriers are raised by the conflict of interest provisions of State Ethics Law for unsolicited proposals for innovative technologies. There is a disincentive for a vendor with an innovative product with capabilities not publicly known, to assist a procurement unit in developing specifications for a contract if the vendor cannot bid for the contract.

This bill reflects the task force recommendations for legislation regarding unsolicited proposals.

State Fiscal Effect: The Department of General Services, the Department of Health and Mental Hygiene, and the University System of Maryland advise that the bill will not have a fiscal impact on their agencies.

The Board of Public Works advises that the bill will result in a minimal increase in the number of contracts for board review, and that this could be handled with existing resources.

The Maryland Department of Transportation (MDOT) advises that the bill could result in an increase in the number of contracts being awarded based on unsolicited proposals. This would result in a decrease in expenditures associated with normal procurement costs. However, MDOT anticipates an increase in contract processing time (cost negotiation, approvals, internal evaluation, etc.). MDOT also notes that because the contracts can only be for two years, there will be associated costs at the end of the contract term for continuing the services through a sole source or competitive procurement.

The Division of Correction advises that the bill's fiscal impact cannot be quantified at this time. The bill may encourage vendors to approach the department with proposals, but any resulting contracts will require additional staff time for the preparation of materials and presentation to the Board of Public Works.

The Department of Legislative Services advises that, for those goods or services not generally and publicly available, the bill may make the use of innovative technologies easier for State agencies. The administrative costs for procurements based on unsolicited proposals may decline or increase for any particular agency, but any change would be minimal and could be handled with existing resources.

Additional Information

Prior Introductions: None

Cross File: SB 315 (Senator Neall) – Economic and Environmental Affairs.

Information Source(s): Department of General Services, Department of Health and Mental Hygiene, University System of Maryland, Board of Public Works, Department of Transportation, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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