

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE

Senate Bill 693

(Senator Collins)

Economic and Environmental Affairs

Procurement - Maryland Construction Quality Assurance Act

This bill establishes “competitive best value contracting” as the required method of procurement for a construction contract over \$500,000 by a primary procurement unit.

Fiscal Summary

State Effect: Potential increase in procurement costs for primary procurement units. The costs of goods and services could also increase because of additional vendor requirements.

Local Effect: None.

Small Business Effect: Potential meaningful. Small businesses would face additional paperwork requirements for bidding. Also the use of nontechnical criteria for evaluation could place small businesses without a long and/or favorable work history, or sufficient financial resources, at a disadvantage.

Analysis

Bill Summary: This bill establishes “competitive best value contracting” as the required method of procurement for a construction contract over \$500,000 by a primary procurement unit. However, the head of a primary procurement unit may determine in writing that there is a compelling need to use an alternative procurement method for a contract.

The bill defines “competitive best value contracting” as a method that: (1) utilizes the solicitation of competitive sealed bids; and (2) requires systematic review and evaluation of price and technical proposals including past contractor performance, firm resources, and technical qualifications.

The bill specifies that when procurement is based on competitive best value contracting, the procurement unit must seek competitive sealed proposals by issuing a request for proposals. A request for proposals must include:

- the date, time, and place for submitting the proposal;
- a statement that the offeror must submit separate price and technical proposals;
- the scope and specifications, if available, of the procurement contract; and
- the factors used to evaluate the proposal and their relative importance.

The factors used for evaluation must include:

- price;
- past performance;
- management plan (A management plan is defined as a plan of the key personnel, quality control programs, safety programs, and management training programs. It includes projections of needed equipment, materials, and manpower, and a proposed schedule and plan for managing and coordinating all levels of material and personnel.);
- craft personnel;
- subcontracting plan (a subcontracting plan includes management personnel and the project staffing plan of prelisted contractors); and
- the use or proposed use of Minority Business Enterprise (MBE) firms.

The factors used for evaluation may include other non-technical factors. The bill specifies: (1) the appointment of the evaluation team or teams; (2) the information the evaluation team is to obtain and prepare as part of the evaluation of a technical proposal; and (3) what factors to consider in evaluating a price proposal. When evaluating a proposal, the evaluation team may only consider the factors and subfactors listed in the request for proposals.

An offeror must prelist subcontractors, and the contractor may not substitute a prelisted subcontractor without written approval of the procurement unit before commencing work.

Current Law: Procurements may be made using: (1) competitive sealed proposals; (2) noncompetitive negotiation; (3) sole source; or (4) an intergovernmental cooperative

purchasing agreement. There are no statutory specifications for the contents of a request for proposals or the criteria to be used to evaluate a proposal.

Background: The federal government, the University System, and the Maryland Stadium Authority use the best value contracting method.

State Fiscal Effect: The Department of Transportation advises that the bill's requirements would increase the time needed to process procurements and maintain records. The department anticipates that additional procurement staff would be required, including three at the State Highway Administration: two transportation engineers and one administrative assistant. Fiscal 2002 expenditures would increase by \$122,700 for salaries, fringe benefits, and supplies reflecting the October 1 effective date. Later years would reflect annualization and inflation.

The Board of Public Works advises that State procurement personnel would need additional training. The board estimates that the additional training costs would be at least \$10,000.

The Department of General Services (DGS) advises that the best value contracting method would require establishment of a new program to maintain the necessary information and to provide quality control and ongoing management. The department anticipates a need for four staff persons: one director; two procurement officers; and one administrative assistant. DGS advises that fiscal 2002 expenditures would increase by \$210,100 for salaries, fringe benefits, equipment, and other costs reflecting the October 1 effective date. Later years would reflect annualization and inflation.

The Department of Legislative Services advises that the best value method would increase the processing time for procurements, which could result in increased expenditures. However, the magnitude of any such increase cannot be reliably estimated at this time. If the head of the procurement unit determines there is a compelling need to use another procurement method, the best value method would not be used. This means that if the costs or burden of any procurement were to be significantly increased because of the best value method, an alternative method may be used. Therefore, existing resources may be sufficient to meet the bill's requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 1093 (Delgate Riley, *et al.*) – Commerce and Government Matters.

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

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