HB 1226

Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

House Bill 1226 (Delegate Rosenberg, *et al.*)
Appropriations Economic and Environmental Affairs

Elementary and Secondary Education - Procurement - Competition

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This bill requires local boards of education to draft procurement specifications that provide a clear and accurate description of the functional characteristics or the nature of an item to be procured. The specifications may include a statement of the local board's requirements or provide for the submission of samples of an item to be procured. Specifications that use a manufacturer's product to describe the characteristics needed to meet the local board's requirements must allow for the submission of equivalent products unless: (1) a particular manufacturer's product is required to maintain compatibility of service or equipment; (2) a particular manufacturer's product is required to meet the health needs of students; (3) replacement parts or maintenance are a paramount consideration; or (4) a product is purchased for resale.

Fiscal Summary

State Effect: None. The procurement process is mandated for local boards of education and requires no oversight by the State Board of Education or the Maryland State Department of Education.

Local Effect: Local school expenditures could be reduced due to increased procurement competition.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A local board of education is required to advertise bids for school building, improvement, supplies, or equipment that are more than $15,000. The advertisement must be placed in at least one newspaper of general circulation in the county at least two weeks before bids are to be filed. A local board may name in the specifications and advertisements the particular make, kind, or brand of products and services to be contracted for or purchased. The law does not apply to emergency repairs and contracts for the purchase of books and materials of instruction. Contracts must be awarded to the lowest responsible bidder that meets specifications. Except for the New Baltimore City Board of School Commissioners, local boards are not required to establish additional procurement specifications or regulations.

Background: A Court of Appeals of Maryland decision in the case of *Chesapeake Charter Inc., et al. v. Anne Arundel County Board of Education* (March 7, 2000) affirmed a decision by the Circuit Court for Anne Arundel County that the Maryland State Board of Contract Appeals does not have authority over disputes regarding procurement transactions made by local boards of education because local boards are not subject to the State General Procurement Law. The Court of Appeals noted that "in the 19 years since the General Procurement Law went into effect, no effort has been made to subject the procurement of supplies and services by the county boards to that law." The State Board of Education has likewise declined to resolve local contract disputes.

Local Expenditures: Local expenditures for school building, improvement, supplies, or equipment could be reduced under a more competitive procurement process. The Maryland Association of Boards of Education advises that local boards, in order to ensure that quality standards are met, sometimes indicate in procurement bids that certain products must be used by contractors. This usually occurs with construction contracts. In fiscal 1998, local school systems spent $471 million on school construction, of which $296 million was for contracted services. The level of savings that would result from an alternative bidding practice cannot be estimated at this time.

Small Business Effect: Small businesses that have been denied an opportunity to bid equally could benefit significantly from increased bid opportunities.

Additional Information

Prior Introductions: None.

Cross File: SB 438 (Senator Haines, *et al.*) – Economic and Environmental Affairs.

Information Source(s): Maryland State Department of Education, Maryland Association of Boards of Education, Department of Legislative Services

Fiscal Note History: First Reader – February 21, 2001
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