

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 238 (Senator Stone)
Education, Health, and Environmental Affairs

Procurement - Construction Contracts - Maryland Construction Quality Assurance Act

This bill authorizes “competitive best value contracting” as a method of procurement for construction contracts over \$2,500,000 by a primary procurement unit, and establishes that it is the policy of the State to use competitive best value contracting for construction procurement to the greatest extent possible.

Fiscal Summary

State Effect: Potential minimal increase in procurement costs for the Maryland Department of Transportation (MDOT), the Department of General Services (DGS), and other primary procurement units.

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. According to the 1998 Survey of U.S. Businesses by the U.S. Census Department, 91% of the firms in Maryland in the construction industry have fewer than 20 employees.

Analysis

Bill Summary: The bill defines “competitive best value contracting” as a method that: (1) utilizes the solicitation of competitive sealed proposals; and (2) requires the

evaluation of price and technical proposals to make awards that are the best value to the State and procurement unit.

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 (RFP) must include:

- the date, time, and place for submitting the proposal;
- a statement that the offeror must submit separate price and technical proposals;
- the project specifications; and
- the price and technical evaluation criteria used to evaluate the proposal and their relative importance.

Generally, the technical and evaluation criteria and their respective weights are:

- price – 70%;
- past performance – 13%;
- management plan – 5%;
- project staffing plan – 5%; and
- fulfillment of minority business participation goals – 7%.

A procurement officer may assign different weights or add criteria subject to the following rules: (1) price may not be less than 50% of total weight; (2) none of the above criteria are excluded; and (3) additional criteria must be relevant to contract completion or in the best interest of the State.

Each offeror submitting a proposal must include a list of subcontractors with contracts of \$500,000 or more, a list of minority business enterprise firms, and the type of work being performed by each subcontractor. An offeror may not prelist alternative subcontractors and may not substitute an alternate subcontractor for a prelisted subcontractor without authorization of the procurement officer before beginning work.

The bill provides for the evaluation and scoring of technical and price proposals. The bill specifies that an unsuccessful offeror may request a debriefing by the procurement officer and receive: (1) the price and technical score of the successful offeror; (2) the offeror's technical score; and (3) if developed, the overall ranking of all offerors.

Current Law: Procurements may be made using: (1) competitive sealed bids; (2) competitive sealed proposals; (3) noncompetitive negotiation; (4) sole source; or (5) 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 of Maryland, and the Maryland Stadium Authority use the best value contracting method.

State Fiscal Effect: MDOT advises that the State Highway Administration plans to open 15 bids during fiscal 2004 of \$2.5 million or more for which the best value method of procurement could be used under the bill's requirements. MDOT advises that the bill's requirements would increase the time needed to process procurements. The department anticipates that additional procurement staff may be required.

DGS advises that the best value contracting method will increase the cost of projects, prolong the procurement/bid phase of capital projects, and could increase the architectural and engineering design fees if the preparation of the RFP were included in the contract. DGS advises it will need six new positions: two program managers, one senior engineer, one DGS procurement officer senior, one agency procurement associate lead, and one agency procurement associate II. General fund expenditures for fiscal 2003 could increase by \$306,123 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 disagrees with these estimates. The best value method would increase the processing time for procurements, which could result in increased expenditures. The costs of goods and services could also increase because of additional vendor requirements. However, the magnitude of any such increase cannot be reliably estimated at this time. The bill provides that it is the policy of the State to use the best value method of procurement for construction contracts to the greatest extent possible, but does not require the use of the best value method. This means that if the costs or burden of any procurement were to be significantly increased through use of the best value method, an alternative method could be used. Therefore, existing resources may be sufficient to meet the bill's requirements.

Additional Information

Prior Introductions: In 2002, HB 480, a similar bill, received an unfavorable report from Commerce and Government Matters.

Cross File: HB 306 (Delegate McIntosh) – Health and Government Operations.

Information Source(s): Department of General Services, Board of Public Works, Morgan State University, Maryland State Treasurer's Office, University System of Maryland, Department of Transportation, Department of Budget and Management, Department of Public Safety and Correctional Services, Department of Legislative Services

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