

**Department of Legislative Services
Maryland General Assembly
2004 Session**

FISCAL AND POLICY NOTE

Senate Bill 215 (Senator Stone)
Education, Health, and Environmental Affairs

Procurement - Construction Contracts - Maryland Construction Quality Assurance Act

This bill authorizes procurement officers to select “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: General fund expenditures would increase by \$10,000 in FY 2005 to reflect one-time training costs that the Board of Public Works (BPW) would provide to agency procurement staff. Potential minimal increase in procurement costs for the Maryland Department of Transportation (MDOT), the Department of General Services (DGS), and other primary procurement units.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	10,000	0	0	0	0
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

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 (RFP). An 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: Section 13-102 of the State Finance and Procurement Article states that competitive sealed bids are the preferred method of procurement for all State contracts except architectural and engineering services and information technology services. A procurement officer must specifically authorize the use of another available method for a procurement to use any other method. Other methods permitted by statute include competitive sealed proposals, noncompetitive negotiation, sole source procurement, emergency or expedited procurement, small procurement, or an intergovernmental cooperative purchasing agreement.

Competitive sealed proposals are the preferred method for human, social, cultural, or educational services, or for the lease of real property. Competitive sealed proposals permit the State to review both technical responses and the price; however, the technical and price components of a proposal must be evaluated separately from each other. The relative weight of each evaluation factor must be provided with the RFP. There are no statutory specifications for the contents of an RFP or the criteria to be used to evaluate a proposal.

State Fiscal Effect: MDOT advises that the State Highway Administration plans to open 25 bids of \$2.5 million or more from January 2004 through the end of fiscal 2005 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 estimates that for each day that a review panel is required to review five bids under the provisions of this bill, \$40,000 in staff resources time will be required.

DGS estimates 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 also believes that prohibiting contractors from substituting subcontractors would raise procurement costs because it would preclude some contractors from adjusting bids to provide a best and final offer. DGS further estimates that procurements handled through best value contracting would require 200 hours of a senior procurement officer's time and up to 1,800 hours of additional support staff time. The department also estimates an aggregate increase in Attorney General staff time of 500 hours to ensure that DGS is utilizing best value contracting to the greatest degree possible.

DGS estimates it will need six new positions: two program managers, one senior engineer, one DGS procurement officer senior, and two agency procurement associates. General fund expenditures for fiscal 2005 could increase by \$319,473 for salaries, fringe

benefits, equipment, and other costs reflecting the October 1 effective date. Later years would reflect annualization and inflation.

BPW estimates that \$10,000 in training costs for staff would be required. The board bases this estimate on the need to adopt new regulations and have procurement officers trained in the use of those regulations. BPW further notes that the prescribed formula would minimize the impact of potentially significant price differences in contracts. Both DGS and BPW also note in their estimates that best value contracting and competitive sealed proposals are almost identical in practice.

The Department of Legislative Services disagrees with these estimates. The bill is enabling and offers procurement officers another option if competitive sealed bidding is not practicable; it does not require the use of best value contracting. This means that if the costs or burden of any procurement were to be significantly increased through use of the best value method, it would more than likely not be the method selected by the procurement officer. The bill does not alter the statute that makes competitive sealed bids the preferred procurement method. Therefore, existing resources would be sufficient to meet the bill's requirements.

Additionally, both DGS and BPW advise that the process under which this bill would operate is identical to that of competitive sealed proposals. The State has already authorized that process when the procurement officer deems it appropriate, so no substantial additional training would be required. The issue of general training in the methods currently available in procurement law can be addressed through the executive budget process. The provisions of this bill are not the deciding factor that requires training in competitive sealed proposals. BPW's estimate, that \$10,000 in one-time costs may be incurred to provide training in regulations the bill requires the board to adopt, is reasonable.

Small Business Effect: To the extent that qualified small businesses would otherwise be able to successfully bid on construction contracts valued at greater than \$2.5 million, this bill may 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.

Additional Information

Prior Introductions: In 2003, SB 238, a similar bill, was heard in the Education, Health, and Environmental Affairs committee and withdrawn. Also in 2003, HB 306, a similar bill, was heard in the Health and Government Operations Committee and withdrawn. In 2002, HB 480, a similar bill, received an unfavorable report from the Commerce and Government Matters Committee.

Cross File: HB 280 (Delegate McIntosh) – Health and Government Operations.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Legislative Services

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