

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 916 (Washington County Delegation)  
Health and Government Operations Education, Health, and Environmental  
Affairs

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Washington County - Emergency or Expedited Procurements - Revised Bids -  
Required Clauses

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This bill authorizes a procurement officer in Washington County to award a procurement contract on the basis of revised bids in certain circumstances. Certain required clauses are mandated in every contract. The bill also provides for emergency procurements by Washington County to avoid or mitigate serious damage to public health, safety, or welfare.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** Potential minimal administrative cost savings to Washington County by foregoing a complete reissuance of the invitation for bids for procurement contracts. Potential cost savings may be offset by decreased competition and increased prices on procurement contracts.

**Small Business Effect:** Potential meaningful. Small businesses involved in the re-bid process will benefit from decreased competition (*i.e.*, there is no open reissuance of the invitation for bids).

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Analysis

**Bill Summary:** This bill is part of an ongoing effort by Washington County to conform local procurement laws to the State Finance and Procurement Article. The following

outlines the provisions relating to revised bids, emergency and expedited procurements, and required clauses.

### *Revised Bids*

The bill provides that for competitive sealed bids, a procurement officer in Washington County may award a procurement contract on the basis of revised bids if: (1) all bids are rejected for any reason; (2) all bid prices exceed the funds available; and (3) all bids are unreasonable as to at least one requirement and the delay that would result from a new request for bids with revised specifications would be fiscally disadvantageous or otherwise not in the best interests of the county. A procurement officer may issue a request for revised bids to the previous bidders (*i.e.*, the new request is not subject to public notice requirements). Negotiations over revised bids may not be conducted with bidders unless the procurement officer finds a compelling reason to negotiate. The contract must be awarded to the lowest responsive bid.

### *Emergency and Expedited Procurements*

The bill provides that if a sudden and unexpected occurrence or condition which agency management reasonably could not foresee requires an action to avoid or to mitigate serious damage to public health, safety, or welfare, the procurement officer may make an emergency procurement under any method appropriate to mitigate these risks. The procurement officer must: (1) obtain as much competition as possible; (2) limit the procurement only to those items necessary to avoid or mitigate the aforementioned risks; and (3) after awarding the contract, submit to the board of county commissioners a written justification for the use of an emergency procurement.

A procurement officer may issue a contract on an expedited basis if the head of the agency and the board of county commissioners find that: (1) urgent circumstances require prompt action; (2) an expedited procurement best serves the public interest; and (3) the need for an expedited procurement outweighs the benefits of a competitive sealed bid or competitive sealed proposal procurement. The procurement officer must attempt to obtain as much competition as possible under this procurement method.

### *Required Clauses*

The bill provides that all procurement contracts with Washington County must include clauses covering: (1) termination for default; (2) termination by the county for its convenience if the agency determines termination to be appropriate; (3) variations between estimated and actual quantities of work in a procurement contract; (4) liquidated damages; (5) specified excuses for nonperformance; (6) the unilateral right of the county to order changes in the work, if within the scope of the contract, and a temporary stop or

delay in performance; (7) the obligation of the contractor to comply with State political contribution reporting requirements; and (8) notice to the parties that preexisting regulations apply to the procurement contract.

The bill provides that, in addition to the clauses above, construction contracts must include clauses covering contract modification if the site conditions differ from the description in the specifications and requirements for notice, submission, resolution of contract claims. A contract modification or change order clause in a contract must include a provision making any change order or modification subject to written approval from the agency and certification of availability of money and effect of the modification on the project budget. Contract modifications may be prohibited by the agency if it is determined that the cost of the modification is prohibitive.

**Current Law:** Procurement contracts over \$25,000 must be advertised at least one week before the bid deadline. Contracts must be awarded to the lowest responsible bidder with a responsive bid. There is no provision relating to revised bids. Any bid may be rejected by the board of county commissioners for any reason. However, if all bids are rejected, the procurement officer must reissue an invitation for bids.

**Local Fiscal Effect:** Washington County administrative expenses may decrease minimally by allowing for a revised bid process, versus a completely new bid process. The bill will shorten the procurement process for contracts without a suitable bid after the initial request for bids, lessening the inflationary pressure on price levels (*e.g.*, steel prices and other construction materials). Any administrative cost savings could be offset by potential contract cost increases. Any time (including the reissuance of a request for bids) a complete bid process is not undertaken, competition is limited, and prices potentially increase.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Washington County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2005  
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