

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 990 (Delegates Feldman and Hucker)
Health and Government Operations

Procurement - Responsible Bidder or Offeror - Standards

This bill adds additional criteria that an individual must meet to qualify as a responsible bidder or offeror on a State procurement contract. The new criteria include: • providing training and apprenticeship opportunities to enhance employee development and advancement; • having an exemplary record with regard to compliance with applicable State and federal laws and regulations governing employee health and safety; • complying with State prevailing wage laws; and • complying with the federal Fair Labor Standards Act. The Board of Public Works is authorized to issue regulations to implement these provisions.

Fiscal Summary

State Effect: The bill could reduce competition for State contracts, delay contract awards, and increase the number of bid protests from unsuccessful bidders and offerors. To the extent that these things occur, State procurement spending could increase by an indeterminate but potentially significant amount. BPW could issue regulations required by the bill with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: In general, State procurement contracts may be awarded only to responsible bidders or offerors. A responsible bidder or offeror is a person who has the

capability in all respects to perform fully the requirements of the contract, and who possesses the integrity and reliability that will ensure good faith performance.

Background: State prevailing wage laws require that State and local public works projects pay prevailing wages if 50% or more of total construction costs are paid by the State. The prevailing wage law does not apply to projects that cost less than \$500,000. Prevailing wages are defined in Maryland statute as the wages paid to 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, State, and local governments. Certain occupations and establishments are exempt from the minimum wage and overtime provisions, but covered workers are entitled to a minimum wage of not less than \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. Overtime must be paid at a rate of not less than 1.5 times the regular rate of pay for any work that is required in excess of 40 hours of work in a workweek.

Child labor protections under FLSA require that an employee must be at least 16 years old to work in most nonfarm jobs and at least 18 to work in nonfarm jobs declared hazardous by the Secretary of Labor. Youths who are 14 or 15 years old may work outside of school hours in various nonmanufacturing, nonmining, and nonhazardous jobs if they work less than 3 hours a day on school days or 18 hours a week during school weeks. Violations of FLSA requirements can result in both civil and criminal penalties.

State Fiscal Effect: The bill could affect State procurement costs in at least three ways. First, it could reduce the number bidders or offerors who qualify as responsible in response to State procurements. This would reduce competition for State contracts. Second, it could delay contract awards by requiring procurement officers to spend more time gathering data and making determinations about whether bidders and offerors qualify as responsible. Third, given the subjective nature of the new criteria, it could increase the number of bid protests from unsuccessful bidders and offerors who could challenge the determinations of successful bidders as responsible. Legislative Services cannot reliably estimate the potential effects of each of these possibilities on State procurement spending, but in the aggregate, the potential impact could be significant.

BPW advises that it could develop the regulations required by the bill with existing budgeted resources. The bill does not increase the Department of Labor, Licensing, and Regulation's (DLLR) enforcement duties with respect to compliance with prevailing wage and federal labor law, but would likely require greater collaboration and communication between DLLR and State procurement units. It is assumed that DLLR could carry out those duties with existing resources.

Small Business Effect: To the extent that small businesses do not meet the new criteria for responsible bidders and offerors, they could be excluded from State procurements.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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