

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1203 (Delegates Kramer and Valderrama)
Health and Government Operations

State Procurement - Preference - Local Supplies - Matching Bids

This bill requires a State procurement unit that uses competitive sealed bidding to allow a bidder to resubmit a bid to match the lowest bid if (1) the original bid was within 10% of the lowest bid; (2) the bidder is a responsible bidder; (3) the resubmission does not conflict with a federal law or grant affecting the procurement; and (4) the bid has the highest percentage of local supplies to be purchased or used under the procurement of all the bids submitted. "Local supplies" are defined as those whose value, either in part or in whole, is derived from growing, producing, processing, assembling, or manufacturing activities that occur in the State.

Fiscal Summary

State Effect: No direct effect on State procurement costs because the bill still requires that contracts be awarded to the responsible bidder with the lowest responsive bid. Potential administrative and operational effect on State procurement to the extent that the bid resubmission process significantly increases (1) the workload of State procurement offices; (2) delays in the awarding of State contracts; and (3) bid protests, all of which likely negatively affect the cost-effectiveness of State procurement and may ultimately increase State costs. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: Preference for State contracts can be given to resident bidders or offerors only if a nonresident bidder or offeror with the lowest responsive bid or most advantageous proposal is from a state that gives preference to resident bidders or offerors.

Competitive sealed bidding is the preferred method of State procurement, except for human, social, cultural, or educational services, or for leases of real property. The competitive sealed bid procurement process begins with the issuance of an invitation for bids, which for most procurements must occur at least 20 days before bid opening and be posted on eMaryland Marketplace. Among other requirements, the invitation must specify whether the award will be made based on the lowest bid, the lowest evaluated bid, or (for revenue-generating procurements) the bid most favorable to the State.

Price bids are opened in public at a time and place specified in the invitation after the technical offers have been evaluated. For each opened bid, the name of the bidder and the amount of the bid must be disclosed. Bids are irrevocable after opening begins; however, a procurement officer may allow a bidder to correct or withdraw a bid if it is allowed in regulations and is approved in writing by the Office of the Attorney General. The bid is awarded to the responsible bidder who submits the responsive bid that is the lowest bid price, lowest evaluated bid price, or most favorable to the State, as specified in the invitation. A responsible bidder is a person who has the capability to perform the contract's requirements and has the integrity and reliability to ensure good faith performance. A responsive bid is one that conforms in all respects to the invitation for bids.

After bids have been opened, an award may be issued on the basis of revised bids only if all bids are rejected, all bid prices exceed the funds available for the procurement, or the procurement officer determines that all bids are unreasonable and that there is insufficient time to issue a new invitation for bids. In that case, after consulting with all the responsible bidders who submitted responsive bids, the procurement officer issues an invitation for revised bids, which does not need to meet the public notice requirements, and the process repeats.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement laws. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill's requirements.

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;

- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;
- State Retirement and Pension System;
- College Savings Plan of Maryland; and
- Chesapeake Bay Trust.

Small Business Effect: Small businesses that obtain most of their supplies from local suppliers have increased opportunities to be awarded State contracts under the bid resubmission process established in the bill. To the extent that the bill triggers reciprocal resident bidder preferences in other states, however, they may be at a competitive disadvantage in procurements from those states.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Maryland State Department of Education, Department of General Services, Department of Health and Mental Hygiene, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510