

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 913 (Senator Stone)
Education, Health, and Environmental Affairs

State Procurement - Rejection of Bids and Proposals - Businesses Located Outside the State

This bill requires a State procurement unit to reject a bid or proposal if the bidder or offeror is located outside the State, or if any services or goods required by the contract are provided by a subcontractor located outside the State. The requirement does not apply if all bidders or offerors are located outside the State, or if there is no resident subcontractor who is able or qualified to provide the goods or services. The unit may not reject a bid or proposal if doing so violates a federal law or grant affecting the contract. The bill applies to any procurement that is otherwise exempt from State procurement law.

Fiscal Summary

State Effect: State expenditures for procurement contracts (all funds) likely increase due to the bill's provisions restricting competition only to resident bidders and offerors. The magnitude of the increase in expenditures from restricted competition cannot be reliably estimated, but it is likely significant. Potential administrative and operational burdens on State procurement units, which may lead to increased bid and contract protests. No effect on revenues.

Local Effect: None. The bill affects only State procurements.

Small Business Effect: Meaningful.

Analysis

Current Law: For procurements that use competitive sealed bidding, State procurement law requires that contracts be awarded to the responsible bidder who submits the lowest

responsive bid. For competitive sealed proposals, contracts are awarded to the responsible offeror who submits the proposal or best and final offer that is most advantageous to the State. Preference 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.

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 law. However, their procurements would 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.

Background: Given the regional nature of the Maryland economy, nonresident firms often work on Maryland projects, and Maryland firms often work on projects in neighboring states. For instance, a recent analysis of the Dulles Metro Rail project in Virginia conducted by the Metropolitan Washington Airports Authority found that half of the workers on the project were Maryland residents, outnumbering Virginia residents on the project.

State Fiscal Effect: The bill has both operational and fiscal effects on State procurement. Operationally, the bill places an additional burden on State procurement officers to determine the residency of each bidder or offeror as well as each proposed subcontractor. However, the bill does not define residency, so the implementation of this requirement may be inconsistent across agencies, resulting in a possible increase in bid or contract protests. For instance, the bill does not address whether a firm that has its principal office in another state but has a satellite office in Maryland would qualify as a resident business. To the extent that the number of bid and contract protests increases substantially, additional resources for State procurement staff and legal staff to adjudicate those protests may be necessary.

The bill also likely increases the cost of State procurement contracts by limiting competition for most contracts to resident bidders and offerors. A key purpose of State procurement law, incorporated into statute, is “fostering effective broad-based competition in the State through support of the free enterprise system.” By limiting competition, the bill likely increases the cost of contracts. The fiscal effect of limited competition cannot be reliably estimated, but it is likely significant.

An increase in State expenditures for contracts may be at least partially offset by increased business activity (and tax revenue) from resident companies doing business with the State. However, any such impact is indirect and, as noted below, the bill likely reduces contracting opportunities for Maryland-based companies in other states, so any potential benefit for resident companies is offset by reduced business opportunities in other states.

Small Business Effect: In the absence of competition from nonresident firms, resident small businesses will have increased opportunities to be awarded State procurement contracts. However, to the extent that neighboring states invoke reciprocal procurement preferences, which seems likely, those same companies will be at a competitive disadvantage in competing for contracts in other states.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 12, 2012
ncs/rhh

Analysis by: Michael C. Rubenstein

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