Department of Legislative Services

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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1169 (Senator Conway, *et al.*)
Education, Health, and Environmental Affairs

Baltimore City - Procurement by Public Institutions of Higher Education - Preference for Local Bidders or Offerors

This bill establishes the circumstances under which a public institution of higher education that is located in Baltimore City has to apply a percentage preference, as defined by the bill, of 5% to a resident bidder or offeror from Baltimore City for a procurement for goods or services in which all responsive bids or offers are submitted by vendors whose principal office or operation is in the State. The percentage preference must be applied if (1) the resident bidder or offeror is a responsible bidder or offeror; (2) the lowest responsive bid or offer was submitted by a responsible bidder or offeror who is located in the State but is not from Baltimore City; and (3) the preference does not conflict with federal law or a grant affecting the procurement contract.

Fiscal Summary

State Effect: To the extent that affected institutions apply the percentage preference in the bill, higher education expenditures for procurement increase due to contracts not being awarded to the lowest bidder or most advantageous offeror, as discussed below. No effect on revenues.

Local Effect: None. The bill affects only State institutions located in Baltimore City.

Small Business Effect: Meaningful.

Analysis

Current Law: The University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are exempt from most provisions of

State procurement law. However, each university's procurement policies must, to the maximum extent practicable, require the purchasing of supplies and services to be in accordance with Title 14, Subtitle 1 of the State Finance and Procurement Article, which relates to procurement preferences and includes the bill's provisions. In addition, USM, MSU, and SMCM are explicitly subject to provisions of State procurement law related to:

- collusion;
- falsification or concealment of material facts;
- required nondiscrimination clauses;
- retainage;
- minority business participation;
- procurement contract administration;
- timing of payments and resolution of payment disputes; and
- suspension and debarment of contractors.

State agencies may give a preference to a bidder or offeror from the State only if (1) the resident bidder or offeror is a responsible bidder; (2) the lowest bid is by a bidder or offeror from another state; and (3) the state in which the nonresident bidder or offeror is located gives a preference to its residents. Several surrounding states have similar reciprocal preference language in their statutes, so any preference given by a State agency to a resident bidder over an out-of-state bidder would likely trigger reciprocal preferences in neighboring states.

The Baltimore City Community College (BCCC) is a State agency that is subject to all provisions of State procurement law.

A "responsive bid" is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids; "responsive offer" is not a defined term in State law. A "responsible bidder or offeror" is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

State Fiscal Effect: As SMCM is not in Baltimore City, it is not included in this analysis. The USM campuses located in Baltimore City are the University of Baltimore; the University of Maryland, Baltimore; and Coppin State University. MSU is located in Baltimore City and is not part of USM. Under State procurement law, BCCC is also subject to the bill's provisions. The applicability of the bill to other public institutions of higher education in Baltimore City is less well defined, as current law only requires USM campuses in Baltimore City and MSU to abide by the provisions of the bill "to the maximum extent practicable." For the purposes of this analysis, it is assumed that each institution applies the resident preference required by the bill.

The application of the bill's resident preference likely does not trigger any reciprocal preference in another state because the bill's preference only applies to procurements that do not involve any out-of-state vendors. However, some states may view the bill as granting an in-state preference, depending on the wording of their own reciprocal preferences.

To the extent that the application of the procurement preference results in contracts by the affected institutions being awarded to bidders who do not submit the bid with the lowest price, or to offerors who do not submit proposals that are the most advantageous to the State, higher education expenditures for goods and services by USM institutions in Baltimore City, MSU, and BCCC increase. A reliable estimate of the effect of the preference cannot be determined as it depends on the circumstances and frequency under which it is applied, but it could have a meaningful effect on the award of individual procurement contracts.

Moreover, because the bill applies to services associated with capital projects (architectural, engineering, and construction-related services), it may increase capital costs as well. Even so, it is assumed that any such increase simply delays the projects (or other projects) due to higher costs rather than increasing the amount of capital funding provided each year.

Small Business Effect: Small businesses in Baltimore City may benefit from the application of a percentage preference on contracts with institutions of higher education in the city, to the extent that out-of-state bidders or offerors do not participate in those procurements. Similarly, small businesses outside of Baltimore City that seek to do business with one of the affected institutions may be disadvantaged.

Additional Information

Prior Introductions: None.

Cross File: HB 1405 (Delegate M. Washington, *et al.*) - Health and Government Operations.

Information Source(s): Baltimore City, Baltimore City Community College, University System of Maryland, Morgan State University, Department of Budget and Management, Department of General Services, Board of Public Works, Department of Legislative Services

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