

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 311

(The President, *et al.*) (By Request - Administration)

Education, Health, and Environmental Affairs

Health and Government Operations

Promoting Efficiencies in State Procurement

This Administration bill (1) alters the process for the procurement of architectural and engineering (A&E) contracts valued at more than \$200,000; (2) repeals the statutory preference for the use of competitive sealed bids in State procurement; (3) expands authority for master contracting; (4) raises the small procurement threshold; (5) allows community colleges to advertise bid solicitations on eMaryland Marketplace (eMM) instead of in a newspaper published in the county; and (6) makes conforming changes and repeals obsolete provisions.

Fiscal Summary

State Effect: The bill generally streamlines State procurement processes and makes them more efficient. Taken as a whole, the bill's provisions may shorten the solicitation-to-award timeline, which could increase competition and reduce expenditures (all funds) for State procurement. A reliable estimate of any savings is not feasible. No effect on revenues.

Local Effect: Allowing community colleges to advertise bid solicitations on eMM instead of in local newspapers may minimally reduce community college expenditures for advertising, and it creates administrative efficiencies for community colleges. No effect on local revenues.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Architectural and Engineering Contracts: The bill repeals the Architectural and Engineering Services Act, including the Transportation Professional Services Selection Board and the General Professional Services Selection Board. Instead, it authorizes the use of “qualification based selection” for the procurement of A&E services by the Department of General Services (DGS) and the Maryland Department of Transportation (MDOT) if the procurement is made on a competitive basis, includes an evaluation of the technical proposals of at least two persons, and the services cannot be provided feasibly and economically with existing in-house resources. The bill specifies the procedures and conditions to be followed and the factors to be considered by DGS and MDOT when engaging in qualification-based selection for A&E services. It also provides for expedited procurement of A&E services when (1) the services cannot be defined completely or are available only from a single source; (2) the Governor declares an emergency; (3) a natural disaster has occurred; or (4) extraordinary circumstances exist, as specified by the bill. Finally, the bill reestablishes the penalty that currently applies to a violation of the Architectural and Engineering Services Act.

Statutory Preferences: The bill repeals the statutory preference for competitive sealed bids for State procurements and makes a conforming change for community colleges. For State agencies, it authorizes procurement officers to use any of multiple procurement strategies at their discretion, including qualification-based selection for A&E services and master contracting, as described below. However, the bill reaffirms that competitive sealed proposals are the preferred method for the procurement of human, social, cultural, or educational services. For community colleges, it establishes competitive sealed proposals as the preferred method for educational or consultant services.

Master Contracting: The bill authorizes the use of master contracting for services, supplies, and commodities, and it specifies what must be included in a procurement that uses master contracting. The only agencies authorized to adopt master contracts are DGS, MDOT, the Department of Budget and Management, and the Department of Information Technology (DoIT). The Board of Public Works (BPW) must adopt regulations to establish a uniform process for the solicitation of master contracts and task orders under those contracts. The bill makes conforming changes to current law authorizing master (streamlined) contracting by DoIT to reflect the expanded authority to use master contracting. Procedures specified in the bill for the awarding of task orders under a master contract do not apply to a master contract for construction if the master contract (1) is awarded through a competitive process in accordance with the bill and (2) states how task orders will be awarded and the maximum number of qualified contractors that will be awarded a master contract for construction.

Small Procurements: The bill raises the threshold for small procurements from \$25,000 to \$50,000, raises the corresponding threshold for DGS construction contracts from \$50,000 to \$100,000, and applies the \$100,000 threshold to MDOT construction contracts as well. It makes conforming changes throughout State procurement law related to bonding requirements and reporting and notification requirements for small procurements.

Current Law:

Architectural and Engineering Contracts: Under the Maryland Architectural and Engineering Act, the Transportation Professional Services Selection Board and the General Professional Services Selection Board (the boards) manage the procurement of A&E services valued at more than \$200,000 for MDOT and DGS, respectively. Their primary functions are to ensure that procurements for such A&E services are conducted on a competitive basis and to make a recommendation to BPW regarding final selection of an A&E contractor for each project. They may approve a request for A&E services only if they conclude that the services cannot be provided feasibly and economically by existing in-house resources.

The boards publish announcements of A&E procurements, evaluate technical proposals and the qualifications of the persons submitting proposals, determine an order of priority based on those evaluations, and negotiate with the most qualified person. If the boards cannot reach agreement with the most qualified person, they begin negotiations with the next most qualified person until an agreement is reached. The boards then make a recommendation to BPW for final selection.

Statute specifies the membership and terms of the boards; public members are entitled to compensation as provided in the State budget and reimbursement of expenses. The boards must adopt regulations that provide substantially similar procedures between them. There are provisions to waive the provisions of the Act when services cannot be defined or are available from only one source, the Governor declares an emergency, a natural disaster occurs, or extraordinary circumstances exist, as specified in statute.

Statutory Preferences: All procurement units and community colleges must use competitive sealed bids unless alternative methods are authorized; if alternative methods are used, an agency must determine that use of competitive sealed bids is not practical or advantageous to the State. However, for State agencies, competitive sealed proposals are the preferred method for the procurement of human, social, cultural, or educational services or for leases of real property.

Master (Streamlined) Contracting: The Secretary of Information Technology must adopt a streamlined procurement process for information technology (IT) services that provides for the qualification of an offeror in one or more categories of IT services. The streamlined

process must include (1) categories of IT services for which offerors may submit their qualifications; (2) a procedure for the consideration and approval of proposals for qualification in each category; (3) the execution of a standard contract with each offeror approved in each category; (4) policies and procedures to be followed by an agency in the issuance of a task order for IT services with a qualified vendor; and (5) a performance evaluation procedure.

A State agency may then issue task order solicitations for IT services. If the expected cost of a solicitation is more than \$100,000, the agency must issue the solicitation to all qualified offerors in the appropriate category. If the solicitation is expected to cost \$100,000 or less, the agency must issue a solicitation to at least six qualified vendors, or all qualified vendors, whichever is less. Selection of vendors is based on the proposal that is most advantageous to the State.

The Governor's Commission to Modernize State Procurement reported that other agencies use master contracts, but they do so without explicit statutory authorization.

Small Procurements: The maximum threshold for small procurements in State procurement law is \$25,000, except that it is \$50,000 for construction contracts awarded by DGS. In general, small procurements can use simplified administrative procedures but must be consistent with the basic intent of State procurement law.

Community College Bid Solicitations: In general, for every contract for building, improvement, equipment, or supplies, a community college board of trustees must advertise for bids in at least one newspaper published in the county. The advertisements must be published at least two weeks before bids are to be filed. This requirement does not apply to (1) the purchase of books or other materials for instruction; (2) emergency repairs; (3) any contract or purchase made by a county for a community college under specified authority; or (4) a small procurement.

eMM is the State's online procurement portal, which allows local governments to post and receive bid solicitations.

Background: In February 2016, the Governor established the Commission to Modernize State Procurement, chaired by the Lieutenant Governor. The commission met eight times and held three regional public forums. The commission issued its final report in December 2016, which included 57 recommendations divided into five major categories. This bill implements several of the commission's recommendations.

Additional Information

Prior Introductions: None.

Cross File: HB 426 (The Speaker, *et al.*) (By Request - Administration) - Health and Government Operations.

Information Source(s): Department of Information Technology; Maryland Association of Counties; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Promoting Efficiencies in State Procurement

BILL NUMBER: SB 311/HB 426

PREPARED BY: GLO
(Dept./Agency/GLO)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

SB311 will have a meaningful economic impact on Maryland small businesses because it raises the small procurement threshold to \$50,000 generally and to \$100,000 for construction contracts. Small procurements are an expedited procurement process that small businesses find attractive to compete.