

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 112 (Delegate Grammer)
Health and Government Operations

Procurement - Responsible Bidders - Petition by Member of General Assembly

This bill allows a member of the General Assembly to petition the Board of Public Works (BPW) to reconsider and cancel an executed contract awarded using competitive sealed bidding under specified circumstances.

Fiscal Summary

State Effect: To the extent that the bill results in executed contracts being voided under the bill, State expenditures (all funds) increase due to costs associated with adjudicating more bid protests and appeals, delays in contract performance, and reduced competition for State procurements resulting from bidders losing confidence in the State’s procurement process. A reliable estimate of these expenditures is not feasible, but they could be significant. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Within 60 days after the execution and approval of a procurement contract awarded using competitive sealed bidding, a member of the General Assembly may petition BPW to:

- determine whether the person awarded the contract is a responsible bidder; and
- if BPW determines that the person is not a responsible bidder, to cancel the contract and instruct the procurement officer to award the contract to the next responsible

bidder who submitted a responsive bid that is the lowest bid price, lowest evaluated bid price (if provided in the invitation for bids), or is most advantageous to the State (for procurements that generate revenue for the State).

Current Law: Competitive sealed bidding is one of several procurement methods that State agencies may use to procure a contract for goods or services. Under competitive sealed bidding, contract awards are made to the responsible bidder who submits a responsive bid that is (1) the lowest bid price; (2) the lowest evaluated bid price, if the invitation for bids so provides; or (3) for bids that generate revenue for the State, the bid that is most favorable to the State. “Evaluated bid price” is defined as the price of a bid that is adjusted in accordance with objective measurable criteria, which allows the State to compare the economy, effectiveness, or value of the subject of the bids.

“Responsible bidder” is defined as a person who (1) has the capability in all respects to perform fully the requirements of a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

A “responsive bid” is a bid that conforms in all material respects to the invitation for bids.

BPW controls State procurement for most Executive Branch agencies, except for contracts for roads and bridges awarded by the Maryland Department of Transportation. Under the Code of Maryland Regulations, BPW has delegated much of its authority to other agencies for contracts valued at less than \$200,000 (\$1.0 million for contracts awarded by the University System of Maryland). However, contracts valued at \$200,000 or more generally must be approved by BPW and cannot take effect until the approval is given. There is an exception given for emergency or expedited contracts.

The Maryland State Board of Contract Appeals has jurisdiction to hear and decide all disputes arising under a contract with any State agency, as a result of a breach of a contract with any State agency, or as a result of a protest relating to the award of a contract with any State agency.

State Expenditures: The State has a well-established process for managing bid protests and contract appeals. Such cases are heard first by the Maryland State Board of Contract Appeals, whose decisions are then subject to judicial review. Although many State contracts allow for termination for convenience or default, this bill has the potential to increase the number of protests and appeals from aggrieved vendors whose contracts are cancelled by BPW following a petition from a member of the General Assembly.

The bill also has the potential to delay many procurements. Petitions by members of the General Assembly who are not satisfied with a contract award require investigation and

due process by BPW, which can result in significant delays to the performance of a contract. Such delays typically result in higher costs with the passage of time.

Finally, the bill may result in fewer vendors bidding on State contracts due to their lack of confidence that the State will honor contracts duly awarded through the State's procurement process. Reduced competition for contracts typically results in higher contract costs.

Small Business Effect: Successful bidders on State contracts found to be responsible bidders by a State agency run the risk of having their contracts cancelled by petition of a member of the General Assembly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): University System of Maryland; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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