

WRITTEN TESTIMONY IN OPPOSITION TO SB0943

TO: Senate Budget and Taxation Committee

FROM: Danny Mays, CPPO, NIGP-CPP, CPSM, CPSD, CMPO

RE: SB0943 – Competitive Sealed Bids and Proposals – In-State Evaluation Preference

DATE: March 2, 2026

I respectfully oppose SB0943 in my personal capacity. I have spent my career designing, running, and defending competitive public procurements in the State of Maryland. The single most important lesson, across jurisdictions and industries, is that procurement laws succeed when they are clear, predictable, and aligned to the chosen method. SB0943 breaks that alignment in a way that will predictably increase protests, reduce competition, and raise costs for Maryland taxpayers.^{[2][4][12]}

SB0943 rewrites Maryland’s sealed-bidding framework into a quasi-best-value scoring model, effectively converting many IFBs into RFP-style competitions while keeping the legal label “competitive sealed bids.”^[2] In doing so, it injects subjective, protest-prone scoring into a process that Maryland law and COMAR traditionally reserve for objective, price-driven awards (or objectively measurable evaluated-price adjustments), and it elevates a geographic/economic-impact preference to 30% of the total score—triple the proportional ceiling Maryland has historically allowed for “economic benefits” in the RFP context and expressly contrary to BPW guidance that economic-benefits “is NOT a resident business preference” and cannot be used in sealed bidding.^{[9][10]} The predictable result is higher protest exposure, vendor confusion, reduced competition, and retaliation/reciprocity dynamics that can harm Maryland contractors competing in other states.^{[13][11]} Maryland already has lawful tools to grow local firms (SBR, reciprocal preference, CSP economic-benefits within constraints); SB0943 is a structural, high-risk overcorrection.^{[9][10][12]}

Procurement doctrine and why SB0943 collides with it

Competitive sealed bidding (IFB/CSB) exists to buy on price (or evaluated price using objectively measurable adjustments), with award to the lowest responsive/responsible bidder, not to the bidder with the best narrative, best “technical merit,” or best economic-impact story.^{[4][5][6]} That doctrine is not simply a “best practice”, it is embedded in Maryland’s procurement rules: COMAR requires that only “objectively measurable criteria” disclosed in the IFB may be used to determine the most favorable evaluated bid price, and it bars evaluation based on undisclosed criteria.^{[4][5]}

By contrast, competitive sealed proposals (RFP/CSP) are used when an award cannot be made on price alone, and the agency must weigh technical merit and other factors to determine the “most advantageous” offer.^[9] Even then, Maryland historically constrained “economic benefits” scoring to the CSP method and capped it at up to 10% of allocable technical points (when a point system is used), with BPW explicitly warning that “economic-benefits” is not a resident preference and cannot be used to advantage businesses based on location.^{[9][10]}

SB0943 collapses that boundary by mandating, for sealed bids, a 100-point scoring model where price is only 20 points and “technical merit” plus “economic impact” are 70 points.^[2] That is doctrinally the opposite of a sealed bid.

Protest and litigation risk when IFBs use scoring or undisclosed criteria

Moving sealed bidding into subjective scoring predictably increases protests and judicial challenges because disappointed bidders can plausibly allege that criteria were (i) undisclosed, (ii) not objectively measurable, or (iii) applied inconsistently.

Three decisions illustrate the risk pattern:

- **City of Sweetwater v. Solo Construction Corp. (Fla. 3d DCA):** the court affirmed relief for the low responsive/responsible bidder where the city tried to justify award on a “most responsive/responsible” rationale not grounded in the bid documents—underscoring that competitive bid laws protect the public and require fair, non-arbitrary treatment of bidders.^[15]
- **Ritchie Paving, Inc. v. City of Deerfield (Kan. Sup. Ct.):** the court held an unsuccessful low bidder could recover bid preparation costs where the municipality rejected the low bid based on considerations **not stated** in the bid documents—classic liability exposure tied to undisclosed/extra-solicitation criteria.^[16]
- **Western Wyoming Construction Co. v. Board of County Commissioners (Wyo. Sup. Ct.):** the court required re-bidding when a county applied an undisclosed local preference (a form of geographic favoritism) inconsistent with the bidding framework—illustrating how geographic preferences in “low bid” systems trigger judicial correction.^[17]

Maryland’s own protest forum (MSBCA) consistently adjudicates disputes that hinge on whether evaluations complied with disclosed criteria and law, and its decisions are precedential and subject to judicial review.^{[18][14]} At the federal level, GAO’s FY2025 bid-protest statistics show that even under a mature procurement regime, protest “effectiveness” is 52% (sustain or corrective action), and “unreasonable technical evaluation” remains a leading sustain ground and a clear warning sign for any reform that expands subjective evaluation opportunity.^[14]

State examples of in-state preference and reciprocity dynamics

SB0943’s 30-point “State and local economic impact” scoring explicitly awards points for in-State characteristics such as principal place of business, in-State workforce percentage, and use of in-State subcontractors.^[2] Many states already use variations of these tools, often with reciprocity provisions that reward residents *only because other states do the same*.

Illustrative examples (primary/official where available):

- **Florida:** authorizes a bidder preference framework and reciprocity-style adjustments (Florida Statutes § 287.084).^[19]
- **Texas:** uses a reciprocal preference regime (Texas Government Code § 2252.002), applying other states’ preferences against them.^[20]
- **Georgia:** DOAS explains Georgia “uses reciprocity,” and Georgia code provides that Georgia vendors get the “same preference” other states give their own residents; Georgia also contemplates economic-impact considerations (e.g., “multiplier effect” and public revenue effects for certain procurements).^{[21][22]}

- **Alaska:** has bidder preferences (including Alaska bidder and related preferences) implemented by statute and state procurement rules.^[23]
- **New Mexico:** maintains resident-business preferences (including resident contractor preference) within its procurement code framework.^[24]

The practical takeaway is not that Maryland should copy these models; it is that preference systems invite reciprocal responses, and Maryland’s own BPW advisory identifies reciprocity as the narrow, legally grounded exception to the general rule against residency favoritism.^[11]

It is also important to recognize that, across the states, there exists a long-standing practical equilibrium with respect to geographic preference policy. Most states have deliberately avoided broad, across-the-board in-state preference scoring in favor of narrow, targeted programs applied in limited circumstances or specific industries. This reflects an understanding that expansive geographic preferences tend to trigger reciprocal responses that ultimately shrink market access for resident firms rather than expand it.

Maryland has historically operated within this equilibrium. The State employs reciprocity provisions defensively, rather than offensively, and relies on targeted programs such as small business and MBE initiatives to advance economic policy goals without restructuring core source-selection methodology.

SB0943 represents a departure from this posture. By embedding a substantial in-State economic impact scoring component into both sealed bidding and sealed proposals, the bill positions Maryland to initiate a broad geographic preference framework. Maryland represents roughly two percent of national GDP. If Maryland embeds a broad in-State scoring preference into statute, larger neighboring markets have every incentive to respond in kind. Maryland firms may gain marginal advantage inside a comparatively modest procurement market, but risk disadvantage across far larger markets where many of our technology and professional services firms compete. The likely result is a contraction, not an expansion, of opportunity for Maryland businesses.

Operational, legal, and economic risks of SB0943

SB0943 creates a concentrated cluster of risks, many of which can compound each other:

Protest exposure and procurement delay. A sealed-bid award with 70% non-price scoring creates far more evaluative judgment calls. Each judgment call is a protest hook, and procurement timelines can be disrupted even when the agency ultimately prevails.^{[14][18]}

Vendor confusion and reduced competition. Maryland’s own Procurement Advisor has warned that increasing complexity contributes to “vendor confusion and reluctance to compete,” correlating with more single-bid/proposal outcomes.^[12] SB0943 adds a new required economic-impact statement for responsiveness and a scoring system that many vendors will perceive as unpredictable or “stacked,” making non-Maryland (and even Maryland) firms more hesitant to bid, especially on commodity-type purchases that should be straightforward.^{[2][12]}

Administrative burden and verification problems. SB0943 requires bidders/offerors to submit economic-impact statements (employees, subcontractors, taxes, jobs, locations) and then requires

evaluators to score economic impact (including capital investment/reinvestment). That is not a light lift: it demands (i) definitions, (ii) documentation standards, (iii) audit/verification protocols, and (iv) an enforcement mechanism if promised impacts do not materialize.^[2]

Conflict with existing Maryland policy architecture. BPW’s long-standing guidance states:

- economic benefits evaluation is not a resident preference and cannot be used to advantage businesses by location, and
- economic benefits evaluation is for CSP only and may not be used under sealed bidding.^[10] SB0943 goes the other way: it makes “principal place of business in the State” worth points and hard-codes the concept into sealed bidding.^{[2][10]}

Interstate reciprocity and retaliation. Maryland has a reciprocal preference statute/policy structure, reinforced by BPW advisory, designed to avoid starting a preference war while still protecting Maryland vendors when other states discriminate.^[11] SB0943 can be read as Maryland initiating (or escalating) geographic preference, creating political and economic incentives for other states to respond in ways that harm Maryland contractors seeking work elsewhere.^{[11][13]}

Federal funding compliance exposure. For federally assisted procurements, geographic preferences are often restricted. Federal grant procurement standards prohibit “statutorily or administratively imposed... geographical preferences” in bid/proposal evaluation except where federal statutes expressly allow them.^[25] Federal-aid highway project rules similarly bar geographic preferences on those projects.^[26] SB0943’s “unless otherwise required by federal law” is a warning label that agencies must carve out large swaths of spending or risk audit findings and repayment.^{[2][25][26]}

Cost inflation and market distortion. Preference systems can raise procurement costs. Peer-reviewed research on California’s bid preference found measurable procurement cost increases attributable to preference policies.^[27] SB0943’s design (price only 20/100 points) structurally increases the odds that the State pays more for less, particularly in categories where quality is already fully captured by specification compliance.^{[2][27]}

SB0943 converts sealed bidding into best-value scoring. Under SB0943, an IFB award is no longer driven by the lowest responsive/responsible bid (or objectively measurable evaluated price). Instead, sealed bids must be scored on a 100-point scale—40 points for “technical merit,” 30 points for “State and local economic impact” (including principal place of business in Maryland and in-State workforce), 20 points for total cost, and 10 points for prior performance.^[2] That design is the functional definition of an RFP-style tradeoff, not a sealed bid. It also deletes the IFB’s traditional requirement to state whether award is based on lowest bid price or lowest evaluated bid price and to identify objectively measurable evaluated-price criteria.^{[2][5]}

This is structurally inconsistent with Maryland’s sealed-bidding doctrine and COMAR. Maryland’s procurement rules for competitive sealed bidding require that bid evaluation be based on disclosed criteria and that only “objectively measurable criteria” be applied in determining the most favorable evaluated bid price; undisclosed criteria may not be used.^{[4][5]} SB0943 requires scoring categories (including “technical merit” and “economic impact”) that are inherently judgment-based and difficult to reduce to objective measurability across evaluators.^{[2][4]} If the policy

goal is best value, Maryland already has the competitive sealed proposals method for that exact purpose.^[9]

SB0943 elevates a geographic preference to 30% of the score, contradicting BPW's long-standing policy. BPW guidance states plainly that “economic-benefits” evaluation is not a resident business preference and may not be used to provide competitive advantages based upon business location; it also states economic-benefits may not be used under competitive sealed bidding.^[10] SB0943 does the opposite by awarding points for in-State principal place of business, in-State workforce percentage, and in-State subcontractor use.^[2] This is a seismic shift in Maryland procurement policy architecture.

SB0943 expands protest hooks and litigation exposure. Courts repeatedly reject bid awards where agencies rely on criteria not stated in the solicitation or where they blur the low-bid framework with “best interests” judgment calls. In *City of Sweetwater*, the low responsive/responsible bidder had a clear legal right to award when the city attempted to justify a higher bid on an extra-document “most responsive/responsible” rationale.^[15] In *Ritchie Paving*, the municipality’s use of unstated factors supported recovery of bid preparation costs.^[16] In *Western Wyoming Construction*, an undisclosed local preference required corrective rebidding.^[17] Importantly, SB0943 makes an economic-impact statement a matter of responsiveness; that raises the stakes of paperwork disputes and increases the chance of “gotcha” protests over form and sufficiency.^[2]

SB0943 also creates reciprocity and federal funding problems. Other states use reciprocal preference tools, meaning Maryland’s adoption of an aggressive in-State scoring system invites retaliation against Maryland vendors competing elsewhere.^{[21][20][13]} And for federally funded procurements, geographic preferences are often prohibited; recipients must conduct procurements in a way that prohibits state/local geographic preferences in bid/proposal evaluation except where federal statutes allow them.^{[25][26]} SB0943 tells agencies to comply with federal law but gives them no specific implementation framework for doing so, creating additional audit and repayment risk.^{[2][25]}

A better alternative exists. If the General Assembly wants to encourage Maryland economic benefits, do it the lawful, proven way: (1) keep sealed bidding price-based; (2) use competitive sealed proposals when best value is required, and apply the existing COMAR economic-benefits factor within the established limits; and (3) strengthen Maryland’s SBR pipeline and capability-building so Maryland firms win on merit and price, not geography.^{[9][10][12]}

SB0943 does not adjust procurement policy. It rewrites the structural boundaries between procurement methods that Maryland has relied on for decades. That kind of shift deserves far more study than this bill provides.

For these reasons, I respectfully and strongly urge an unfavorable report on SB0943.^[2]

IFB vs. RFP COMPARISON TABLE

Attribute	IFB / Competitive Sealed Bids (CSB)	RFP / Competitive Sealed Proposals (CSP)	How SB0943 blurs the line
Primary award basis	Lowest responsive/responsible bid price (or objectively measurable evaluated price)	Most advantageous offer (best value); technical + price tradeoffs	Makes sealed bids awardable on 100-point scoring with only 20 points for cost ^[2]
Allowable evaluation criteria	Must be disclosed; objectively measurable for evaluated-price adjustments	Disclosed evaluation factors; may use points/weights, discussions, BAFOs	Imports “technical merit” scoring into sealed bidding ^{[2][4]}
Typical use case	Requirements are clear; price competition works	Requirements allow multiple solutions; quality/approach must be compared	Forces many clear-spec purchases into subjective evaluation ^[2]
Risk profile	Lower protest risk if specs objective and criteria disclosed	Higher protest risk because evaluations are judgment-based	Raises sealed-bid protest risk by introducing subjective scoring and economic-impact disputes ^{[2][15][16]}

FOOTNOTES/REFERENCES

- [1] Maryland General Assembly, HB1235 (2026RS) bill page (showing title, sponsors, committee, crossfile SB0943). <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB1235?ys=2026RS>
- [2] Maryland General Assembly, HB1235 First Reader (hb1235f.pdf) (full text; amends SF&P §§13-103 and 13-104; adds 100-point scoring and economic impact statement). <https://mgaleg.maryland.gov/2026RS/bills/hb/hb1235f.pdf>
- [3] Maryland General Assembly, SB0943 (2026RS) bill page (crossfile to HB1235; same synopsis and statutory targets). <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0943?ys=2026RS>
- [4] COMAR 21.05.02.13 – Bid Evaluation and Award (sealed bidding; undisclosed criteria prohibited; only objectively measurable criteria). <https://regs.maryland.gov/us/md/exec/comar/21.05.02.13>
- [5] COMAR 21.05.02.01 – Invitation for Bids (IFB must state basis for award; if evaluated price used, objectively measurable criteria must be set out). <https://regulations.justia.com/states/maryland/title-21/subtitle-05/chapter-21-05-02/section-21-05-02-01/>
- [6] Maryland Procurement Manual (MPM), 3.4.2 Competitive Sealed Bidding (CSB) (award to responsible bidder submitting responsive bid with most favorable bid price). <https://procurement.maryland.gov/mpm-3-pre-solicitation/>
- [7] FAR 14.101 – Sealed bidding (overview of sealed bidding method). <https://www.acquisition.gov/far/part-14>
- [8] FAR 14.503 – Bid samples (illustrates limited technical/sample concepts within sealed bidding). <https://www.acquisition.gov/far/14.503>
- [9] COMAR 21.05.03.03 – Evaluation of Proposals (CSP; economic benefits factor; up to 10% of allocable technical points when point system used; factors not specified may not be considered). <https://regs.maryland.gov/us/md/exec/comar/21.05.03.03>
- [10] Maryland Board of Public Works, BPW Advisory 1996-4 (economic-benefits factor is NOT a resident business preference; may NOT be used for CSB). <https://bpw.maryland.gov/pages/adv-1996-4.aspx>
- [11] Maryland Board of Public Works, BPW Advisory 1996-5 Reciprocal Preferences (Maryland law does not generally authorize favoring resident vendors; reciprocity framework). <https://bpw.maryland.gov/pages/adv-1996-5.aspx>
- [12] Maryland BPW, FY2024 Procurement Advisor’s Report (notes complexity contributes to vendor confusion/reluctance to compete; discusses resident reciprocal preference). https://bpw.maryland.gov/Publications/FY2024%20Procurement%20Advisor%27s%20Report_FINAL.pdf
- [13] Maryland General Assembly, FY2027 Operating Budget Analysis (D05E01 – BPW) (states Procurement Advisor study recommended against instituting another in-state preference; cites competition and retaliation concerns). <https://mgaleg.maryland.gov/pubs/budgetfiscal/2027fy-budget-docs-operating-D05E01-Board-of-Public-Works.pdf>
- [14] U.S. Government Accountability Office, Bid Protest Annual Report to Congress (FY2025) (52% effectiveness rate; technical evaluation among leading sustain grounds). <https://www.gao.gov/products/gao-26-900695>

- [15] City of Sweetwater v. Solo Construction Corp., Florida Third District Court of Appeal (via Justia PDF). <https://law.justia.com/cases/florida/third-district-court-of-appeal/2002/3d01-3349.html>
- [16] Kansas Judicial Branch, Ritchie Paving, Inc. v. City of Deerfield (published opinion; bid documents did not disclose factors; remedy included bid prep costs). <https://kscourts.gov/Cases-Decisions/Decisions/Published/Ritchie-Paving-Inc-v-City-of-Deerfield>
- [17] Wyoming Judicial Branch, Western Wyoming Construction Co. v. Board of County Commissioners (official PDF; challenges involving local preference/award framework). <https://documents.courts.state.wy.us/Opinions/20130523/2013WY63.pdf>
- [18] Maryland State Board of Contract Appeals, About / jurisdiction over bid protests (decisions precedential; subject to judicial review). <https://msbca.maryland.gov/about-us/>
- [19] Florida Legislature (Online Sunshine), Fla. Stat. § 287.084 (Florida preference framework). https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0200-0299/0287/Sections/0287.084.html
- [20] Texas Constitution & Statutes (official), Texas Government Code § 2252.002 (reciprocal preference framework). <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>
- [21] Georgia Department of Administrative Services (DOAS), Georgia Preference Laws (reciprocity description). <https://doas.ga.gov/state-purchasing/purchasing-law-administrative-rules-and-policies/georgia-preference-laws>
- [22] Georgia Code § 50-5-60 (vendor preference + reciprocity; includes economic-impact considerations for certain procurements). <https://codes.findlaw.com/ga/title-50-state-government/ga-code-sect-50-5-60/>
- [23] Alaska State Legislature, AS 36.30.170 – Preferences among bidders/offerors. <https://www.akleg.gov/basis/statutes.asp#36.30.170>
- [24] New Mexico OneSource (state portal), Resident contractor preference statute. <https://nmonesource.com/nmos/nmsa/en/item/4399/index.do>
- [25] 2 CFR § 200.319(c) – Competition (Uniform Guidance; prohibits geographic preferences in evaluation except where federal statutes allow). <https://ecfr.io/Title-2/Section-200.319>
- [26] 23 CFR § 636.107 (Federal-aid highway projects: contracting agencies must not use geographic preferences). <https://codes.findlaw.com/cfr/title-23-highways/cfr-sect-23-636-107/>
- [27] Justin Marion, “Are Bid Preferences Benign? The Effect of Small Business Subsidies in Highway Procurement” (Journal of Public Economics, 2007) (findings consistent with cost increases tied to preference programs). <https://www.sciencedirect.com/science/article/pii/S0047272706000767>