TO: Senate Budget and Taxation Committee
FROM: Department of Information Technology
RE: Senate Bill 943 - State Procurement - Competitive Sealed Bids and Proposals - In-State Evaluation Preference (Buy Maryland, Buy Local Act)
DATE: March 4, 2026
POSITION: Letter of Concern

The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, Maryland 21401

Dear Chair Guzzone,

The Department of Information Technology (DoIT) respectfully submits this letter of concern for Senate Bill 943.

Senate bill 943 would significantly alter Maryland's sealed bidding (Invitation for Bids - IFB) procurement process by requiring that technical and economic benefit criteria account for approximately 70% of the evaluation score, while price would account for only 20%. The bill also incorporates geographic and economic impact considerations into what has traditionally been an objective, price-driven procurement method.

While we appreciate the bill's intent to support Maryland businesses and promote economic development, DoIT has serious legal, fiscal, and operational concerns with the proposal as drafted.

High Litigation and Protest Risk

Sealed bidding is intentionally structured to be objective and "protest-resistant." Awards are typically made to the lowest responsive and responsible bidder based on clear, measurable criteria, i.e., price.

By injecting 70% subjective scoring (technical and economic factors) into the IFB process, SB 943 undermines the objectivity that protects the State from bid protests. This change substantially increases the likelihood of "unreasonable evaluation" claims.

Courts have consistently ruled against agencies that use undisclosed or subjective criteria to bypass a low bidder. For example, in *City of Sweetwater v. Solo Construction*, the court reinforced that agencies may not deviate from objective standards in sealed bidding. SB 943 places Maryland at significant risk of litigation, delays in project delivery, and additional administrative costs.

Conflict with Existing Maryland Policy

The Board of Public Works (BPW) has long maintained that "economic benefits" are not a resident business preference and should not be used in sealed bidding procurements. Current COMAR regulations reflect this principle and prohibit geographic favoritism in IFB awards.

SB 943 directly conflicts with this long-standing procurement policy by hard-coding geographic and economic preference into the sealed bid process. This represents a fundamental shift in Maryland's procurement framework.

Interstate Retaliation and Harm to Maryland Businesses

Procurement operates within a national marketplace. Many states, including Texas, Florida, and Georgia, utilize reciprocal preference laws. If Maryland enacts geographic favoritism, these states will automatically apply equivalent penalties to Maryland vendors bidding on their projects.

Maryland's economy is smaller than many of these states, and our IT and technology companies compete nationally for public sector work. For many Maryland IT vendors, in-state sales to State and local public sector customers cannot offset the loss of opportunity in larger external markets.

Reciprocal preference laws in other states would harm the competitive position of Maryland businesses and could result in incalculable harm to our growing technology sector. Rather than strengthening Maryland businesses, SB 943 may ultimately restrict their ability to compete nationwide.

Threat to Federal Funding

Federal grant standards under the Uniform Guidance and federal highway rules strictly prohibit the use of statutorily imposed geographic preferences in procurement.

SB 943 creates a compliance minefield by requiring agencies to either:

1. Administer two separate procurement frameworks (one for state-only funds and one for federal funds), or
2. Risk noncompliance and potential clawback of federal funding.
3. Given the substantial federal funding that supports Maryland programs and infrastructure, this risk is significant and cannot be understated.

Administrative and Economic Burden

Increased Complexity:
Requiring detailed "Economic Impact Statements" effectively imposes a paperwork tax on vendors. This additional administrative burden may deter small businesses, the very businesses the bill seeks to support, from participating in State procurements.

Maryland's procurement system is designed to ensure fairness, transparency, fiscal responsibility, and compliance with federal law. Senate bill 943 fundamentally alters the sealed bidding framework by increasing litigation risk, conflicting with existing procurement policy, exposing Maryland businesses to interstate retaliation, jeopardizing federal funding, and increasing administrative burden and procurement costs.

For these reasons, the Department of Information Technology respectfully requests an unfavorable report on Senate bill 943. We appreciate the Committee's consideration and stand ready to work with you on alternative approaches that support Maryland businesses while preserving the integrity and competitiveness of the State's procurement system.

Thank you for your consideration.

Best,

Katie Savage
Secretary
Department of Information Technology