

Danny Mays- SB0943.pdf

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Position: UNF

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>

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Position: UNF

***SB 943 - State Procurement - Competitive Sealed Bids and Proposals -
In-State Evaluation Preference (Buy Maryland, Buy Local Act)***

Position: Letter of Opposition

Committee: Senate Budget and Taxation Committee

Date: March 4, 2026

From: John R. Woolums, Esq.

The Department of General Services (DGS) is providing this Letter of Opposition for the Committee’s consideration regarding Senate Bill 943. This legislation proposes significant revisions to state law by introducing standardized state procurement evaluation criteria for awarding competitive sealed bids and proposals. These bill provisions would have significant fiscal and operational impacts on the Department of General Services Office of State Procurement (DGS OSP).

The key changes proposed by this legislation include the following:

- Bids and proposals would be evaluated on a 100-point scale with defined weighting criteria. Technical merit will account for 40 points, state and local economic impact will account for 30 points, total cost to the state will account for 20 points, and past performance will account for 10 points.
- Offerors would be required to submit a detailed economic impact statement outlining workforce composition, use of in-state subcontractors, anticipated tax revenue, job creation or retention, capital investment, and contract performance locations.
- The evaluation framework would place significant emphasis on state and local economic contributions in addition to technical quality and cost.
- The proposal would reinforce the “Buy Maryland, Buy Local Act” by prioritizing bids that generate greater economic benefits within the State.

Under existing law, procurement officers retain discretion to determine the most appropriate evaluation methodology based on the specific needs, complexity, and market conditions of each procurement. The proposed legislation would replace that flexible framework with a mandatory, standardized 100-point evaluation structure, thereby limiting procurement officers’ discretion to tailor evaluation criteria to the unique characteristics of individual requirements.

By prescribing fixed point allocations for technical merit, economic impact, cost, and past performance, the legislation would constrain the State's ability to apply a true best-value analysis suited to different sectors, industries, and levels of technical complexity and, in many instances, unnecessarily lengthen the procurement timeline and potentially limit nuanced evaluation of technical differences among proposals.

Additionally, the required economic impact statement and fixed weighting of in-state economic factors would further narrow evaluative flexibility, prioritizing standardized criteria over procurement-specific judgment. Operationally, implementation would require significant updates to DGS OSP templates, policies, procedures, and training, as the legislation represents a fundamental shift from the State's current best-value procurement practice to a more prescriptive and inflexible evaluation structure. Also, the significant preference proposed by this bill may increase the risk of triggering other states' "reciprocal preferences" against Maryland-based vendors.

The Procurement Reform Act of 2025 (PRA) (HB 500, Ch. 601) requires the following: "on or before December 1, 2025, the Procurement Advisor to the Board of Public Works shall conduct a study of the economic impacts of instituting an in-State preference for Maryland vendors for all State procurements and submit a report of its findings and recommendations to the Board of Public Works and, in accordance with § 2-1257 of the State Government Article, the General Assembly." DGS suggests framing the findings of the Procurement Advisor's study as a basis for future discussions regarding the Board of Public Works implementing an in-State preference, grounded in the risk exposure associated with reciprocal preference provisions.

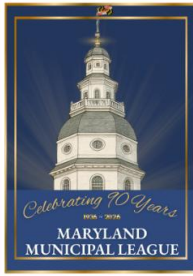
For these reasons, DGS respectfully requests an unfavorable report on Senate Bill 943.

Contact: John R. Woolums, Esq., Director of Government and Legislative Affairs,
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Position: UNF



TESTIMONY

COMMITTEE: Senate Budget and Taxation

DATE: March 4, 2026

POSITION: Unfavorable

BILL: SB 943

The Maryland Municipal League (MML) represents 161 local governments across the State of Maryland. While the League shares the sponsor's commitment to bolstering Maryland's economy and supporting our local business community, we must respectfully oppose SB 943. As drafted, the bill's rigid procurement mandates pose significant administrative and financial challenges for municipal governments.

SB 943 introduces a standardized scoring system requiring that 30 points (30%) of every procurement evaluation be allocated to "state and local economic impact." While well-intentioned, this creates a "one-size-fits-all" framework that fails to account for the diverse operational realities of Maryland's cities and towns. Municipalities vary widely in size and technical capacity; a mandate of this scale overrides local autonomy in determining how best to steward taxpayer dollars.

For many of our member jurisdictions, the primary driver of procurement is fiscal responsibility. By mandating such a heavy weighting for local economic impact, SB 943 could effectively force municipalities to bypass the lowest responsible bidder. This shift risks higher contract prices for essential infrastructure and services. Furthermore, many small towns lack the specialized staff required to perform the complex economic impact modeling necessary to satisfy the bill's scoring requirements.

The League is particularly concerned about the impact on our members in Western Maryland and on the Eastern Shore. These municipalities often share economic ecosystems with neighboring states. A rigid "Buy Maryland" requirement ignores these long-standing regional partnerships and could stifle competition, ultimately driving up costs for residents in these border communities where the most qualified or cost-effective vendor may reside just across state lines.

While MML supports the spirit of investing in Maryland, the prescriptive nature of SB 943 creates an inflexible procurement environment that will lead to budgetary strain and administrative hardship for local governments.

For these reasons, the League respectfully requests an unfavorable report on SB 943.

For more information relating to this piece of testimony, please contact:

Justin Fiore: Director, Advocacy and Public Policy, justinf@mdmunicipal.org

SB943_LOO_State Procurement - Competitive Sealed B

Uploaded by: Kevin O'Keeffe

Position: UNF

March 4, 2026

To: Members of the Senate Budget and Taxation Committee

From: Independent Electrical Contractors (IEC) Chesapeake

Re: **Oppose Senate Bill (HB) 943 – State Procurement - Competitive Sealed Bids and Proposals - In-State Evaluation Preference (Buy Maryland, Buy Local Act)**

IEC Chesapeake membership includes 150 contractors and 70 business partners. IEC Chesapeake members represent approximately 9,000 employees. In addition, it has approximately 1300 electrical apprentices.

Although IEC Chesapeake respects the intent of the sponsor to create work opportunities for Maryland-based contractors and employees, IEC Chesapeake respectfully opposes SB943. Given Maryland's close proximity to four other states and the District of Columbia, local hiring preferences have proven to be impractical. The state of Maryland should not be creating more obstacles to hiring willing and available skilled workers. Given the ease of moving between our neighboring jurisdictions, contractors often perform projects in more than one jurisdiction. It is also common for Maryland residents to work on construction projects in neighboring states and the District of Columbia. Providing up to a 30 point advantage for the State and local impact of a bid is unworkable.

For the above reasons, IEC Chesapeake is requesting an unfavorable report. Thank you for your consideration. If you have any questions, please contact Grant Shmelzer, Executive Director of IEC Chesapeake, at 301-646-0197 or at gshmelzer@iecchesapeake.com or Kevin O'Keeffe at 410-382-7844 or at kevin@kokeeffelaw.com.

About Us

Independent Electrical Contractors (IEC) Chesapeake represents members throughout Delaware, Maryland, Virginia, West Virginia, and Washington, D.C. Our headquarters are located in Laurel, Maryland. IEC Chesapeake has an extensive apprenticeship program for training electricians. In addition, IEC Chesapeake promotes green economic growth by providing education and working with contractor members, industry partners, government policy makers and inspectors to increase the use of renewable energy.

SB 943- State Procurement- Competitive Sealed Bids

Uploaded by: Matthew Teffeau

Position: UNF



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

March 4, 2026

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To: Senate Budget and Taxation Committee

Subject: SB 943- State Procurement- Competitive Sealed Bids and Proposals- In-State Evaluation Preference (Buy Maryland, Buy Local Act)

Position: Oppose

Dear Chair and Members of the Senate Budget and Taxation Committee:

On behalf of the **Associated Builders and Contractors (ABC)**, Maryland's construction trade association representing merit shop contractors and subcontractors across Maryland, we respectfully oppose **SB 943** as currently drafted.

While we appreciate the intent to support Maryland businesses and strengthen the state's economy, **SB 943** would fundamentally alter Maryland's long-standing competitive procurement framework by shifting contract awards away from lowest-cost, quality-based evaluations toward in-state preference factors, including local employment metrics and projected tax impact.

Our joint legislative subcommittee has reviewed the bill and identified several policy concerns. **We would welcome the opportunity to work with the bill sponsor to explore potential amendments that preserve fairness and fiscal responsibility while supporting Maryland's economic goals.**

State procurement laws are designed to ensure fairness, transparency, and the best value for Maryland taxpayers. SB 943 would require all competitive bids and proposals to be evaluated using new "standardized criteria" emphasizing in-state economic impact rather than cost and merit alone. This approach could:

- Allow higher-cost contracts to be awarded over lower-cost bids based solely on geographic preference.
- Reduce incentives for bidders to submit their most competitive pricing or innovative solutions.
- Increase overall program and project costs for Maryland agencies and, ultimately, taxpayers.

Additionally, the bill would require bidders to compile detailed economic impact data for every procurement, regardless of size or scope. Collecting and reviewing this information would add unnecessary administrative burdens and





staffing costs for agencies and vendors alike — disproportionately impacting smaller contractors and subcontractors.

Maryland’s hard-bid, lump-sum procurement strategy has proven highly effective in promoting responsible public spending, particularly in Southern Maryland. Although SB 943 is framed as providing “local support,” most jurisdictions already maintain local preference policies that are best administered and enforced at the county level rather than imposed statewide.

Further, many Maryland jurisdictions have transitioned to Construction Manager at Risk (CMAR) delivery methods for public school construction projects, utilizing a best-value approach. While portions of SB 943 appear to mirror elements of a CMAR-style evaluation, counties currently retain greater discretion and control over scoring and selection processes than would be provided under this legislation.

ABC strongly supports policies that grow Maryland jobs and strengthen our state’s economy. However, SB 943, as drafted, risks undermining open competition, increasing costs, and creating administrative inefficiencies in Maryland’s procurement system. Procurement decisions should remain transparent, competitive, and rooted in true best value — balancing price, quality, performance, and accountability without arbitrary geographic weighting.

For these reasons, we respectfully request an **unfavorable report** on SB 943.

Thank you for your consideration

Matt Teffeau
Director of Government Affairs



SB0943 - LOO - State Procurement - Competitive Sea

Uploaded by: Patricia Westervelt

Position: UNF



Wes Moore
Governor
Aruna Miller
Lieutenant Governor
Kathryn Thomson
Acting Secretary

March 4, 2026

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

Re: Letter of Opposition – Senate Bill 943 – State Procurement – Competitive Sealed Bids and Proposals – In-State Evaluation Preference (Buy Maryland, Buy Local Act)

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following letter of opposition for the Committee’s consideration of Senate Bill 943.

Senate Bill 943 restricts competition, is not aligned with the procurement procedures by which low bid procurement is conducted, is inconsistent with the purposes behind Division II of the State Finance & Procurement Article and is likely unconstitutional.

State procurement regulations¹ currently allow up to 10% of the total allocable technical points to be awarded under an economic benefits evaluation factor when a point system is used in the evaluation of proposals. If a point system is not used, an economic benefits evaluation factor may be included in the technical evaluation factors and be ranked in its relative order of importance, as the procurement officer determines. Procurement officers consult BPW Advisory 1996-4 Economic-Benefits as a Factor in Evaluating CSP², which outlines considerations in assessing whether the economic-benefits factor is appropriate in particular procurements and discusses how to evaluate proposals that offer such benefits.

SB 943 assigns 30 points to the State and local economic impact of the proposal, which would serve as a resident business preference and provide competitive advantages to one business over another based solely upon the business’s location. This could increase single bids and proposals received if out-of-state vendors perceive disadvantage and choose not to submit bids or proposals in turn increasing costs.

When economic benefits are used as an evaluation factor, even Maryland-based vendors do not always choose to demonstrate in their proposals how the contract will benefit the Maryland economy through Maryland subcontractors, suppliers, and joint venture partners; the number of jobs generated for Maryland residents; tax revenues generated to Maryland and its political

¹ Code of Maryland Regulations 21.05.03.03(A)(3)

² <https://bpw.maryland.gov/Pages/adv-1996-4.aspx>

subdivisions; and the amount or percentage of subcontract dollars placed with Maryland small and minority businesses. Under SB 943, bids or proposals submitted without the State and Local Economic Impact statement would be deemed non-responsive, decreasing competition and increasing single bids or proposals.

Procurement officers need to maintain the ability to tailor evaluation factors to the specific circumstances of each procurement. Frequently utilized factors such as project implementation plans and approaches to problem resolution do not appear in the standardized criteria. The 40% cap on technical evaluation scores could put Marylanders at risk as inferior products could win bids. This becomes extremely important with safety-related supplies such as train propulsion parts, attenuation truck parts, and materials in our bridges.

Economic benefits may not currently be used under the competitive sealed bidding method, but SB 943 conflates sealed bid procedures with competitive sealed proposal procedures and turns the low bid process under § 13-103 of the State Finance & Procurement Article into a proposal process which is generally contrary to fundamental procurement process. Rather than selecting the vendor who submitted the lowest responsive bid, the procurement officer would have to cap the consideration of the bid price at 20% and evaluate other factors for the remaining 80% of the points. This could increase protest risk by introducing subjectivity into what has historically been an objective, price-driven procurement method. It would significantly add to the timeline between advertising the solicitation and awarding the contract, and delay MDOT getting vital contracts into place.

SB 943 contradicts the following purposes and policies of Division II found in § 11-201 of the State Finance & Procurement Article:

- (1) providing for increased confidence in State procurement;
- (2) ensuring fair and equitable treatment of all persons who deal with the State procurement system;
- (3) providing safeguards for maintaining a State procurement system of quality and integrity;
- (4) fostering effective broad-based competition in the State through support of the free enterprise system; and
- (7) getting the maximum benefit from the purchasing power of the State.

Federal agencies consider In-State or local geographic preferences to be impermissibly restrictive of competition. Accordingly, MDOT would need an exemption for Federally-funded procurements.

The Honorable Guy Guzzone
Page Three

Lastly, adoption of a formalized in-State economic preference framework raises broader policy concerns. If Maryland moves toward structured geographic scoring, other states may adopt reciprocal preference models, which could disadvantage Maryland-based suppliers seeking work outside the State. This has historically been a key reason for hesitation around geographic preference programs.

The Maryland Department of Transportation looks forward to continued collaboration with the sponsor on Senate Bill 943 and respectfully requests the Committee consider this information when deliberating Senate Bill 943.

Respectfully submitted,

Matthew Mickler
Director of Government Affairs
Maryland Department of Transportation
410-865-1090

Senate Bill 943- DoIT Written Testimony.docx.pdf

Uploaded by: Sara Elalamy

Position: UNF



Wes Moore | Governor
Aruna Miller | Lt. Governor
Katie Savage | Secretary

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



Wes Moore | Governor
Aruna Miller | Lt. Governor
Katie Savage | Secretary

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