

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1107

(Delegate Rosenberg)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Intergovernmental Cooperative Purchasing Agreements

This bill requires a primary procurement unit to (1) make a determination before it initially sponsors, participates in, renews, or modifies an intergovernmental cooperative purchasing agreement (ICPA) and (2) post the determination on the unit's website. The determination must be in writing and include specified information regarding the potential benefits of the agreement. If a primary procurement unit sponsors or participates in an ICPA, the agreement must be approved by the unit head and is subject to any other approval required by law. Any ICPA sponsored by a primary procurement unit must comply with all notice requirements in current law that apply to State contracts.

Fiscal Summary

State Effect: The bill has an operational effect on primary procurement units to the extent that they must provide evidence of the economic benefits of ICPAs either when initially sponsoring or participating in an ICPA or when the ICPA is renewed or modified. If providing the evidence creates an undue burden on primary procurement units, they may refrain from participating in ICPAs, which may result in the loss of any economic benefits associated with them. The bill may also result in the State avoiding or withdrawing from ICPAs that are not economically beneficial to the State. No effect on revenues.

Local Effect: The bill imposes requirements on State primary procurement units; any impact on ICPAs that encompass local jurisdictions is assumed to be negligible.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: If a State primary procurement unit initially sponsors or elects to participate in an ICPA, the written determination must include:

- sufficient evidence that the ICPA will provide cost benefits to the State *or* will promote either administrative efficiencies or intergovernmental cooperation; and
- a statement that the ICPA is in the best interest of the State and is not intended to evade the purposes of State procurement law.

If a primary procurement unit seeks to renew or modify an existing ICPA, the written determination must include:

- sufficient evidence that the ICPA will provide cost benefits to the State *and* will promote either administrative efficiencies or intergovernmental cooperation; and
- a statement that the ICPA is in the best interest of the State and is not intended to evade the purposes of State procurement law.

Current Law: An “ICPA” is defined as a contract:

- entered into by at least one governmental entity and a person selected in a manner consistent with the purposes of State procurement; available for use by the governmental entity and at least one additional governmental entity that may, but need not be, the original party to the contract; and intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing; or
- between a primary procurement unit and a person who, at the time the ICPA is awarded, has a contract with the federal government and who agrees to provide the unit with identical prices, terms, and conditions as stipulated in the federal contract.

“Governmental entity” means the federal government or an agency or other instrumentality of the federal government; another state or an agency or other instrumentality of another state; a bistate or multistate agency; a county, municipal corporation, or other political subdivision of Maryland or of another state, or an agency or other instrumentality of the political subdivision; a bicounty or multicounty agency; a primary procurement unit; or an affiliation, alliance, consortium, or group composed solely of governmental entities that is established for purposes of promoting intergovernmental cooperative purchasing.

State procurement law recognizes 10 primary procurement units, which generally can manage their own procurement, subject to the oversight of the Board of Public Works. They are the:

- State Treasurer;
- Department of Budget and Management;
- Department of General Services;
- Maryland Department of Transportation;
- Department of Information Technology;
- University System of Maryland;
- Maryland Port Commission;
- Department of Public Safety and Correctional Services;
- Morgan State University; and
- St. Mary's College of Maryland.

Whenever a primary procurement unit officer determines that it is in the best interest of the State to sponsor or participate in an ICPA, the unit may, with the approval of the head of the unit and any other required approvals, become a party to or participate under the agreement. The determination by the procurement officer must be in writing and include a statement that the ICPA (1) will provide cost benefits to the State; (2) will promote administrative efficiencies or intergovernmental cooperation; and (3) is not intended to evade the purposes of State procurement law.

If a primary procurement unit sponsors an ICPA, the contract must be awarded in a manner consistent with State procurement law, as if the unit was the sole participant under the contract. If a primary procurement unit participates in an ICPA, any protest or contract claim involving the agreement must be handled in accordance with the terms of the agreement.

Background: State agencies advise that they generally do not initiate ICPAs, but they do at times join existing ICPAs to derive the benefits of economies of scale associated with intergovernmental purchasing. Following the initial determination that the ICPA provides economic benefits to the State, no additional determination is required.

State Fiscal Effect: The bill's net effect on procurement expenditures by State agencies cannot be determined because it has the potential to either increase or decrease expenditures. Under current law, primary procurement units must only provide a statement that ICPAs are beneficial to the State, but they are not required to provide any evidence to that effect. The bill requires that a unit initially provide evidence of cost benefits to the State or of administrative efficiencies or intergovernmental cooperation when it seeks to sponsor or participate in an ICPA. When a unit seeks to renew or modify an ICPA, it must provide evidence of cost benefits, among other potential benefits.

The process of providing evidence that pricing available through an ICPA is beneficial may, at times, involve only Internet searches for comparable pricing from other vendors.

For some goods and services, however, comparable pricing is not readily available and may require agencies to carry out solicitations, which creates an administrative burden on agencies. Though such evidence is not required upon initial sponsorship or participation in an ICPA, to the extent that the administrative burden of providing such evidence when the agreement is renewed or modified dissuades agencies from entering into ICPAs, they may forego the potential economic benefits ICPAs provide.

However, the requirement that agencies provide evidence of the economic benefits of ICPAs makes it less likely that the State joins or remains in an ICPA that does not provide consistently competitive pricing. This is especially true for ICPAs that are in effect for a long period of time, where market pricing may change, making the ICPA prices less competitive.

Small Business Effect: To the extent that the bill results in the State participating in fewer ICPAs, there may be more opportunities for small businesses in the State to participate in State procurement since fewer purchases will be made from ICPAs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Allegany, Harford, Montgomery, Talbot, and Wicomico counties; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Department of Budget and Management; Department of Information Technology; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2017
kb/ljm Third Reader - March 28, 2017
Revised - Amendment(s) - March 28, 2017
Enrolled - May 9, 2017
Revised - Amendment(s) - May 9, 2017

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510