

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1557

(Delegate Hayes, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Architectural Services and Engineering Services - Reciprocal
Preference

This bill establishes a reciprocal preference for resident offerors in the procurement of architectural and engineering (A&E) services, and it makes other conforming changes.

Fiscal Summary

State Effect: The bill restores a reciprocal preference that was in place until October 2017; to the extent that the preference is applied and limits competition for State A&E contracts, State expenditures (all funds) for those contracts may increase due to reduced competition. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: For the purposes of the bill, a “preference” includes a percentage preference, an employee residency requirement, or any other provision that favors an offeror from one state to the disadvantage of an offeror from another state.

A “resident firm,” which includes specified joint ventures, is defined as one that:

- is licensed or otherwise authorized to provide A&E services in the State; and
- either has its only office in the State or has had its principal office in the State for at least six months prior to the request for proposals.

A “nonresident firm” is one that does not have its only office in the State or has not had its principal office in the State for the preceding six months.

For procurements of A&E services, a State agency can apply a preference to a proposal from a resident firm if the following conditions are met:

- a responsible nonresident firm is determined to be the most qualified person in accordance with State procurement law;
- that firm is from a state that has a preference that favors offerors from that state;
- a responsible resident firm submits a proposal and certifies at that time that it is a resident firm; and
- the preference applied by the agency is the same as the preference applied by the other state and does not conflict with a federal law or grant affecting the contract.

For an A&E procurement, if a procurement agency determines that competing proposals from a resident firm and a nonresident firm are equally qualified, the agency may apply a preference for the resident firm.

The procuring agency may request specified information from the nonresident offeror, and it may not apply more than one preference to the proposal from the resident offeror. If the resident offeror qualifies for more than one preference, the agency must apply the preference that is most advantageous to the resident firm.

The Board of Public Works must adopt regulations to implement the bill, and it must maintain a list of all states with a preference that favors an offeror from that state to the disadvantage of an offeror from this state.

Current Law:

Reciprocal Preferences

State agencies may apply reciprocal preferences when using either competitive sealed bidding or competitive sealed proposals to procure supplies or services, including A&E services, construction-related services, or energy performance contracts. For competitive sealed bidding, an agency may give a preference to a bidder from the State only if (1) the resident bidder is a responsible bidder; (2) the lowest responsive bid is by a bidder from another state; (3) the state in which the nonresident bidder is located gives a preference to its residents; and (4) the preference does not conflict with a federal law or grant affecting the contract.

For competitive sealed proposals, an agency may apply a preference to a resident offeror if (1) a responsible nonresident offeror submits a proposal; (2) the state in which the nonresident offeror is located gives a preference to its residents; and (3) the preference does not conflict with a federal law or grant affecting the contract.

Procuring agencies may request specified information from nonresident bidders or offerors regarding any resident preference given by the state in which they are located. The agencies may give the same preference given by the state in which the nonresident bidder or offeror is located.

A “responsive bid” is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids; “responsive offer” is not a defined term in State law. A “responsible bidder or offeror” is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

Architectural and Engineering Services Procurement

Chapters 588 and 589 of 2017 established a new process for the procurement of A&E services, which can only be carried out by the Department of General Services (DGS) or the Maryland Department of Transportation (MDOT). The new process, called “qualification based selection,” requires DGS or MDOT to issue a request for architectural services or engineering services containing specified information about the procurement. DGS or MDOT must then evaluate the technical proposals and the qualifications of the persons submitting the proposals and determine an order of priority based on those evaluations. The procuring agency must then begin negotiations with the most qualified person, but if the agency cannot reach agreement with that person, it must terminate negotiations and begin negotiations with the next most qualified person. This process continues until an agreement is reached and an award is made.

Background: As procurement for A&E services is now made by qualification-based selection and not by either competitive sealed bidding or competitive sealed proposals, the existing reciprocal preference in statute no longer applies to those procurements. The bill restores a reciprocal preference for A&E procurements.

Small Business Effect: To the extent that the reciprocal preference is applied, resident A&E firms may benefit when they participate in procurements for State contracts. As the resident preference is applied only when other states already have a preference, it does not affect their participation in procurements in other states.

Additional Information

Prior Introductions: None.

Cross File: SB 1020 (Senator Conway) - Education, Health, and Environmental Affairs.

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

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