

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1108 (Delegate McMillan, *et al.*)
Health and Government Operations

State Procurement - Use of Electronic Means to Conduct Procurement

This bill requires that primary procurement units, beginning July 1, 2020, conduct procurement by electronic means, including the solicitation, bidding, award, execution, and administration of a contract. Electronic procurement must be carried out in accordance with the Maryland Uniform Electronic Transactions Act (MUETA). However, a bidder or offeror may elect to submit a bid or offer and conduct all elements of a procurement in hard copy form.

Fiscal Summary

State Effect: Assuming timely implementation of the State's new electronic procurement system in August 2019, the bill has no material fiscal effect on State finances, as discussed below.

Local Effect: None. The bill only affects State procurement.

Small Business Effect: Minimal.

Analysis

Current Law:

Primary Procurement Units

Subject to the oversight and control of the Board of Public Works (BPW), primary procurements units may carry out their own procurements without the approval of another State agency. Chapter 590 of 2017 designates the following State agencies as primary

procurement units, effective October 1, 2019 (until then, the Department of Budget and Management (DBM), the Department of Information Technology (DoIT), and the Department of Public Safety and Correctional Services are *also* primary procurement units):

- State Treasurer;
- Department of General Services (DGS);
- Maryland Department of Transportation;
- University System of Maryland;
- Maryland Port Commission;
- Morgan State University; and
- St. Mary's College of Maryland.

Electronic Procurement

eMaryland Marketplace (eMM) is the State's electronic procurement portal. It is managed jointly by DGS and DoIT.

A primary procurement unit *may* conduct procurement by electronic means, including the solicitation, bidding, award, execution, and administration of a contract. Electronic procurement must be in accordance with MUETA. Subject to the approval of BPW, State law authorizes a unit conducting an electronic procurement or a private contractor providing electronic procurement services to the State to charge a bidder a fee for the use of electronic means. BPW has not approved any fees for bidders or offerors to use eMM; however, vendors that sell commodities to the State under existing contracts through eMM pay a transaction fee for each sale.

In most cases, State agencies are required to post notice of invitations for bids or requests for proposals valued at more than \$25,000 on eMM at least 20 days before bids or proposals are opened. They are also required to post notice of contract awards on eMM within 30 days after the execution and approval of a contract.

Maryland Uniform Electronic Transactions Act

MUETA gives legal effect to an electronic record or signature provided the procedures in the Act are adhered to. Under MUETA, a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and if a law requires a record to be in writing, an electronic record satisfies the law. Similarly, if a law requires a signature, an electronic signature satisfies the law.

Background: Although eMM is based on an electronic procurement platform that allows for the full array of procurement and contract management transactions to be carried out electronically, many of those features are not currently available under the State's current eMM contract. DGS advises that the contract expires in August 2019, and that DGS and DoIT are currently developing a request for proposals for a new, comprehensive electronic procurement system to replace eMM.

The State Highway Administration advises that it has already implemented electronic procurement for its procurements, separate from eMM.

State Expenditures: DGS advises that it is planning to procure and launch a new electronic procurement system for the State in August 2019, when the State's current contract for eMM expires. Assuming that the launch of a new comprehensive electronic procurement system occurs on schedule, and that it is accompanied with the necessary training and technical support for procurement staff, the bill has no practical fiscal effect because the capability to implement the bill's requirements by July 2020 will be in place.

Additional Comments: DGS and DBM advise that the bill impinges on the discretion of primary procurement units to use procurement methods best suited to their needs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Governor's Office; University System of Maryland; Department of Budget and Management; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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