

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1244

(Delegate Sample-Hughes)

Health and Government Operations

Education, Health, and Environmental Affairs

State Procurement - Concrete - Preference

This bill requires each State agency responsible for awarding a contract for the procurement of concrete or that includes the purchase or use of concrete to give a 5% price preference to the procurement, or required use under the contract, of a specified concrete mix. The percentage price preference must apply only to the portion of a contract that is directly attributable to the cost of concrete. The Board of Public Works (BPW) must adopt regulations that establish guidelines for agencies to implement the bill's requirements; those guidelines must be published on the BPW website. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: The application of the price preference has little or no direct effect on State expenditures, as discussed below, but it does have a meaningful operational impact. However, the Maryland Department of Transportation (MDOT) may incur one-time reprogramming costs in FY 2022 to implement the bill. The bill's requirement may put federal transportation revenues at risk, as discussed below.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: “Concrete” means structural and nonstructural masonry and ready mix concrete building products. Preference must be given to the procurement of a concrete mix design that:

- consists of Type 1L cement or an ASTM C595 blended cement with slag cement, fly ash, or natural pozzolan;
- meets specifications set by the American Association of State Highway and Transportation Officials; and
- meets or exceeds any other engineering performance standards set by the State.

Current Law: There is no preference in State law based on the specifications of concrete purchased by State agencies. State procurement law includes various purchasing price preferences, including for locally grown foods, small businesses, resident bidders, environmentally preferable products, and mercury-free products. In general, purchase price preferences do not exceed 5% of the lowest responsive bid price.

State Expenditures: State agencies generally do not procure concrete directly. Both the State Highway Administration (SHA) and the Department of General Services (DGS) advise that they typically do not procure concrete directly; instead, contractors working on the construction and/or repair of roads and State buildings typically purchase the materials, including concrete, necessary to complete the work. However, SHA advises that it *occasionally* purchases concrete to pour concrete pads at maintenance shops and that any such purchases are done on a small scale.

DGS further advises that, although about half of its construction contracts include a concrete component, concrete typically makes up a “miniscule” proportion of the overall contract amount for each contract. As the price preference applies only to the portion of a contract directly related to the purchase of concrete, the resulting price preference is likely to be relatively small and unlikely to affect the selection of a successful bidder. *For illustrative purposes only*, a 5% price preference applied to a contract in which 3% of the contract is for concrete results in a price preference of 0.15%, or \$75,000 for a \$50 million contract. Thus, although the price preference is unlikely to alter the outcome of the procurement, the bill still requires State procurement officers to calculate the proportion of each bid related to concrete, determine each bid’s eligibility for the price preference, and apply the preference. This creates administrative inefficiencies and may delay construction contract awards.

SHA advises that MDOT’s online bidding system does not currently allow for bids to be broken down into various components; therefore, MDOT may incur costs to reprogram its

system to require bidders to submit bids in a manner that distinguishes the portion dedicated to concrete and to apply the price preference. A reliable estimate is not available.

Additional Comments: SHA advises that the bill's requirement may be problematic for federally funded road projects by requiring a specified mix of concrete instead of allowing materials experts to conduct performance analyses to determine the best mix of concrete to use for individual projects, as required by the federal government.

Additional Information

Prior Introductions: HB 1655 of 2020, a similar bill, was assigned to the House Rules and Executive Nominations Committee, but no further action was taken.

Designated Cross File: None.

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

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