

**Maryland Association of Boards of Education
Public Comments to the
Commission to Modernize State Procurement
June 22, 2016**

The Maryland Association of Boards of Education (MABE), representing all of the state's twenty-four local boards of education, appreciates this opportunity to address the Commission to Modernize State Procurement.

MABE is confident that the current state laws and regulations governing local school system procurements are sufficient in scope and clarity to provide the appropriate degree of accountability and flexibility to not only ensure sound procurement practices but also optimize cost savings for taxpayers. Local school systems, and professional procurement staff, rely on a well-established understanding of the existing procurement law under the Education Article, State Finance and Procurement Article, and State regulations.

Background

Generally, all public school contracts in amounts in excess of \$25,000 must be advertised for the bids and the contract awarded to the lowest responsible bidder who conforms to the specifications (Md. Code Ann., Ed. Art. § 5-112(b)). In addition, several sections of the State Finance and Procurement Article apply specifically to school facilities projects.

Sections 14-301 through 14-308 of the State Finance and Procurement Article define the requirements for minority business participation. These sections are applicable to local boards of education when state PSCP funding is utilized. Each board must approve and implement a Minority Business Enterprise (MBE) procedure to attempt to achieve the minority business enterprise participation goals established in state law and regulations (Md. Code Ann., St. Fin. & Proc. Art. §§ 14-301 to 14-309).

Local bid documents must include prevailing wage rates when state funds are used for the construction, the project construction cost including state and local funding will exceed \$500,000, and the state share will provide 25 percent or more of the construction cost (Md. Code Ann., St. Fin. & Proc. Art. §§ 17-201 to 17-226). Contractors for construction contracts exceeding \$50,000 must furnish a performance and payment bond which becomes binding upon award of the contract. The contractor may provide the equivalent in cash or other security satisfactory to the public body awarding the contract (Md. Code Ann., St. Fin. & Proc. Art. §§ 17-101 to 17-110).

In these ways, school construction contracts are generally subject to competitive bidding requirements. However, alternative financing provisions enacted in 2004 provide that “in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction” a county may:

- (1) Use alternative financing methods;
- (2) Engage in competitive negotiation, rather than competitive bidding, in limited circumstances, including construction management at-risk arrangements and other alternative project delivery arrangements, as provided in regulations adopted by the board of public works;
- (3) Accept unsolicited proposals for the development of public schools in limited circumstances, as provided in regulations adopted by the board of public works; and
- (4) Use quality-based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders, as provided in regulations adopted by the board of public works (Md. Code Ann., Ed. Art. § 4-126(b)).

Litigation & Legislative Proposals

In 2015, MABE joined the Baltimore County Board of Education in opposing a local bill to prohibit the purchase of roofing repair services for public schools through an intergovernmental purchasing cooperative. The Maryland Court of Appeals had already ruled in favor of the Baltimore County Board, finding that a local board of education may purchase roofing repair services for public schools through an intergovernmental purchasing cooperative when it acts pursuant to authority granted by Board of Public Works regulations. As the Court of Appeals recognized, regulations adopted by the Board of Public Works clearly allow school systems to utilize “intergovernmental cooperative purchasing” and “piggybacking” to provide cost benefits, administrative efficiencies, and promote governmental cooperation (COMAR 23.03.03.12).

Most recently, in 2016 legislation was introduced, but not enacted, which would have impeded the ability of local school systems to use cooperative purchasing for school facility projects (HB 330/SB 515). MABE’s opposition to this legislation was grounded in the association’s support for the continued use of cooperative purchasing, or piggybacking on other government contracts, for the purchase of materials related to school construction or repair projects.

MABE respectfully requests that this Commission not pursue or adopt any recommendations regarding amendments to school system procurement law to redress the Building Materials Corp. case; or recommendations consistent with the legislation rejected in 2016 which could have impeded school system efforts to achieve the cost savings and efficiencies the General Assembly has consistently encouraged school systems to employ through cooperative purchasing.

For more information on this or any other education matter, please contact MABE’s Director of Governmental Relations, John R. Woolums, Esq., at jwoolums@mabe.org or 410-841-5414.