

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 789 (Senator Pipkin, *et al.*)
 Education, Health, and Environmental Affairs

Procurement - Preferences - Rural County Business Enterprise Participation

This bill requires State procurement units to structure their procurement procedures to try to achieve the goal that at least 1.0% of the total value of their procurement contracts is made directly or indirectly to businesses located in any of the 18 rural counties of the State beginning July 1, 2014. The Board of Public Works (BPW) must develop regulations to implement the bill and report annually on its implementation. Anyone who commits fraud under the bill is subject to civil and/or criminal penalties specified in the bill.

Fiscal Summary

State Effect: General fund expenditures by BPW increase by \$100,000 in FY 2014 to develop an online database of certified rural business enterprises, and by \$10,000 annually thereafter to maintain the database. State procurement expenditures (all funds) likely increase to the extent that procurements are not made to bidders or offerors who otherwise would have the lowest bids or most advantageous proposals. The extent of that increase cannot be estimated reliably. The bill’s penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,000	10,000	10,000	10,000	10,000
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$100,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill’s penalty provisions are not expected to materially affect local government finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Rural counties in the State are defined as any county *except* Baltimore City or Anne Arundel, Baltimore, Howard, Montgomery, or Prince George's counties.

Solicitation documents for each State procurement must establish an expected degree of rural county business enterprise participation based on the potential subcontract opportunities and the availability of rural county business enterprises to carry out the work. A procurement award must be made to the lowest responsible bidder, or the responsible offeror with the most advantageous offer, that meets, or makes a good faith effort to meet, the goal established for the procurement. The bill does not apply to the extent that it conflicts with federal requirements.

By December 1 of each year, BPW must report to the Legislative Policy Committee on the number and amount of contracts awarded to rural business enterprises and the effectiveness of the program.

A person who commits any of the enumerated fraudulent acts under the bill is guilty of a misdemeanor and, upon conviction, is subject to a fine up to \$1,000 or imprisonment for up to six months, or both. In addition, the person is liable for a civil fine of between \$10,000 and \$30,000 for a first offense and between \$30,000 and \$50,000 for any subsequent offense. The person is also liable for attorney's fees for the plaintiff in a civil case and may not contract with the State until the penalties are paid.

Current Law/Background: Maryland has several procurement preference programs. The State's Minority Business Enterprise (MBE) program, which is scheduled to terminate July 1, 2016, requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with the Secretary of Transportation and the Attorney General. In a year in which there is a delay in establishing the overall goal, the previous year's goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year's guidelines apply.

Prior to the enactment of Chapters 252 and 253 of 2011 (HB 456/SB 120) and Chapter 154 of 2012 (HB 1370), State law established a goal that at least 25% of the total

dollar value of each agency's procurement contracts be awarded to MBEs, including subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses. As of January 2013, a new statewide goal had not been issued by GOMA, so the 25% statewide goal remains in effect. The Maryland Department of Transportation, which serves as the States MBE certification agency, administers a rigorous certification process and maintains a database of more than 4,000 certified MBEs.

In addition, the Small Business Reserve (SBR) program requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by the Department of General Services (DGS), each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors.

DGS is responsible for certifying small businesses. Small businesses self-report their small business status, which DGS does not independently verify. The program's termination date has been extended twice since its inception in 2004, and it is currently scheduled to terminate on September 30, 2016.

State Fiscal Effect: Administration of the preference program by BPW requires the State to certify eligible rural business enterprises and maintain a database of available businesses. Without such a database, procurement units have no means of determining the eligibility of rural business enterprises to carry out work required by a State contract and, therefore, would not be able to develop appropriate goals for each procurement, as required by the bill.

The Department of Legislative Services (DLS) believes that the SBR certification process and database serve as models for this program. This requires a web-based database accessible to all rural business enterprises and procurement units. The database has to be developed during fiscal 2014 so that it is available for use by July 1, 2014, when the preference applies. DGS advises that a self-certification database like the one it uses for SBR costs about \$100,000 to develop, and DLS estimates that it requires about \$10,000 annually to maintain the system. Therefore, general fund expenditures by BPW increase by \$100,000 in fiscal 2014 to develop the certification database, and by \$10,000 in the out-years to maintain it.

State procurement expenditures increase to the extent that the preference program results in the State contracting with vendors who otherwise would not have provided the lowest bid price or most advantageous offer for State procurements. The extent of such an increase cannot be estimated reliably.

Small Business Effect: Procurement opportunities for businesses in rural areas of the State may increase, with possible commensurate decreases for businesses in urban and suburban areas of the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, Queen Anne's, Washington, and Worcester counties; Board of Public Works; Department of Budget and Management; Department of General Services; Maryland Association of Counties; Maryland Department of Transportation; Department of Legislative Services

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ncs/rhh

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