

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 815 (Delegate Haynes, *et al.*)
Health and Government Operations

**State Personnel - Service Contracts - Procurement, Audit, and Reporting
Requirements**

This bill expands the application of an explicit preference in State law to use State employees to provide services to include (1) service contracts entered into by agencies with independent personnel systems and (2) contracts for services provided outside of State-operated facilities. It also requires an agency that seeks to enter into a service contract that is not exempt from the preference to provide a copy of the information required in current law to the exclusive representative of the employees who may be affected by the service contract and, on request, to a member of the public. It further specifies that service contracts are subject to audits to determine compliance with requirements and that the audit findings must be reported to the General Assembly.

Fiscal Summary

State Effect: Expanding the existing preference to include contracts for services by agencies with independent personnel systems or provided outside State-operated facilities increases the administrative burden on the Department of Budget and Management (DBM), which will have to review and certify a larger number of service contracts. DBM can perform this function with existing resources, but it may create delays in the approval of service contracts. The Office of Legislative Audits (OLA) can incorporate the required audits of service contracts into its normal audit procedures of State agencies with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: It is the policy of the State to use State employees to perform all State functions in State-operated facilities in preference to contracting with the private sector to perform those functions. Service contracts with a value of at least \$100,000 are exempt from this statutory preference when:

- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;
- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property;
- a clear need exists to obtain an unbiased finding or opinion; or
- the General Assembly authorizes or requires that certain services be performed by an independent contractor.

Under State procurement law, the Board of Public Works (BPW) controls most State procurement in the Executive Branch but has delegated control of service contracts to DBM under authority given to it by statute. If a service contract is not exempt from the preference to use State employees under any of the specific exemptions in the law, DBM may certify the contract as exempt only if the agency has provided DBM with an analysis of the cost of the contract that shows that it will save the State at least \$200,000 or 20% of the value of the contract, whichever is less, over the life of the contract. The bill requires agencies to share these analyses with the exclusive representative of employees who may be affected by the contract and, on request, with a member of the public.

Procurement units seeking DBM certification of nonexempt service contracts must develop assistance plans for State employees adversely affected by the contract. At least 60 days before issuing a solicitation for a nonexempt contract, they must also provide prior notification to the employees' exclusive representative of the adverse impact to the employees.

In general, procurements by the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are exempt from State procurement law. Until recently, contracts for services (and capital improvements) by those institutions valued at more than \$500,000 were subject to BPW review and approval; Chapter 450 of 2012 raised that value to \$1.0 million (and made other changes). Since BPW has delegated authority over service contracts to DBM, service contracts entered into by USM, MSU, and SMCM in excess of \$1.0 million should be subject to DBM review; however, DBM advises that it has never reviewed any service contracts entered into by the public universities, even prior to the enactment of Chapter 450.

Services are defined as the labor, time, or effort of a contractor and any product or report necessarily associated with the rendering of a service. They include services provided by attorneys, accountants, physicians, consultants, and other professionals who are independent contractors. Services do not include construction-related services, architectural services, engineering services, or energy performance contract services.

OLA is required to conduct an audit of each Executive Branch agency at least once every three years.

Background: The State Personnel Management System includes most employees in Executive Branch agencies; the Judicial and Legislative branches each have independent personnel systems but are not subject to State procurement law. Therefore, they are not affected by the bill. An Executive Branch agency may, if expressly authorized in statute, establish an independent personnel management system. The Maryland Department of Transportation (MDOT) and USM have the two largest independent personnel management systems in the Executive Branch.

DBM advises that most MDOT service contracts have typically been subject to its review and certification, but, as noted above, USM service contracts have not been subject to DBM review and certification. According to DBM, the vast majority of service contracts are certified as being exempt because State employees are not available to perform the services. Only one nonexempt contract has been submitted for approval in recent memory: about 10 years ago, the Department of General Services sought to outsource its information technology services under a nonexempt contract. However, DBM advises that the Maryland Transit Administration recently notified the department that it intends to seek approval for outsourcing security services under a nonexempt contract. The procurement for those services is still underway, so data on the potential cost savings is not available at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 712 (Senator Feldman, *et al.*) - Finance.

Information Source(s): Department of Budget and Management, Department of General Services, University System of Maryland, Department of Legislative Services (Office of Legislative Audits)

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