

HOUSE BILL 1552

P2

8lr2635

By: **Delegates Reznik, Bromwell, Hayes, and Krebs**

Introduced and read first time: February 9, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Preferred Providers – Price Determinations, Work**
3 **Opportunities, and Subcontracting**

4 FOR the purpose of requiring a certain preferred provider to provide supplies and services
5 directly to the State or a certain entity; prohibiting a certain preferred provider from
6 contracting with a subcontractor to provide certain supplies and services; requiring
7 the Pricing and Selection Committee for Blind Industries and Services of Maryland
8 and the Employment Works Program to ensure that not less than a certain percent
9 of certain supplies and services create certain work opportunities; requiring the
10 Committee to ensure that certain supplies and services are provided directly by
11 certain preferred providers and that certain preferred providers do not contract with
12 subcontractors to provide certain supplies and services; requiring the Committee to
13 submit a certain report to the General Assembly; requiring the State or a certain
14 entity to issue an invitation for bids or a request for proposals if certain preferred
15 providers do not meet certain requirements; requiring the Committee to consider
16 certain factors in determining the fair market price for certain supplies or services;
17 establishing that certain living wage requirements apply to a certain method of
18 determining a fair market price under certain circumstances; defining a certain
19 term; and generally relating to preferred providers and procurement.

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 14–103
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2017 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – State Finance and Procurement
27 Section 14–106(a), (f), and (g) and 18–102(b)
28 Annotated Code of Maryland
29 (2015 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – State Finance and Procurement
3 Section 14–106(h) and (i)
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2017 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – State Finance and Procurement**

9 14–103.

10 (a) **[A] EXCEPT AS PROVIDED IN § 14–106(H) OF THIS SUBTITLE AND**
11 **SUBJECT TO SUBSECTION (D) OF THIS SECTION, A State or State aided or controlled**
12 **entity shall buy supplies and services from:**

13 (1) Maryland Correctional Enterprises, as provided in Title 3, Subtitle 5 of
14 the Correctional Services Article, if Maryland Correctional Enterprises provides the
15 supplies or services;

16 (2) Blind Industries and Services of Maryland, if:

17 (i) Blind Industries and Services of Maryland provides the supplies
18 or services; and

19 (ii) Maryland Correctional Enterprises does not provide the supplies
20 or services; or

21 (3) the Employment Works Program established under § 14–108 of this
22 subtitle, if:

23 (i) a community service provider or an individual with disability
24 owned business provides the supplies or services;

25 (ii) neither Maryland Correctional Enterprises nor Blind Industries
26 and Services of Maryland provides the supplies or services; and

27 (iii) a State or State aided or controlled entity is not required by law
28 to buy the supplies or services from any other unit of the State government.

29 (b) A State or State aided or controlled entity shall give preference to the
30 providers listed under subsection (a) of this section in the order that the providers are listed.

31 (c) To the extent practicable, a State or State aided or controlled entity shall
32 include in a maintenance contract that has a component for housekeeping or janitorial

1 services, a requirement that a prime contractor procure janitorial products from Blind
2 Industries and Services of Maryland when the specified products are available.

3 **(D) A PREFERRED PROVIDER THAT PROVIDES SUPPLIES AND SERVICES TO**
4 **THE STATE OR A STATE AIDED OR CONTROLLED ENTITY:**

5 **(1) SHALL PROVIDE THE SUPPLIES AND SERVICES DIRECTLY TO THE**
6 **STATE OR STATE AIDED OR CONTROLLED ENTITY; AND**

7 **(2) MAY NOT CONTRACT WITH A SUBCONTRACTOR TO PROVIDE THE**
8 **SUPPLIES AND SERVICES.**

9 14–106.

10 (a) **(1) In this [section,] SECTION THE FOLLOWING WORDS HAVE THE**
11 **MEANINGS INDICATED.**

12 **(2) “Committee” means the Pricing and Selection Committee for Blind**
13 **Industries and Services of Maryland and the Employment Works Program.**

14 **(3) “SUBSTANTIALLY SIMILAR” MEANS OF A SIMILAR QUANTITY,**
15 **QUALITY, AND STANDARD AS SUPPLIES OR SERVICES THAT MEET THE**
16 **REQUIREMENTS OF THE PROCUREMENT UNIT.**

17 (f) The Committee shall:

18 **(1) FOR EACH CONTRACT,** ensure that **NOT LESS THAN 95% OF THE**
19 supplies and services provided by Blind Industries and Services of Maryland or a
20 community service provider create work opportunities for individuals who have a mental
21 or physical disability, including blindness, for which Blind Industries and Services of
22 Maryland or the community service provider was established to assist;

23 **(2) set the prices of supplies and services that Blind Industries and**
24 **Services of Maryland provides to reflect the fair market prices for the supplies and services;**

25 **(3) establish procedures to govern procurement of supplies and services**
26 **from community service providers and individual with disability owned businesses;**

27 **(4) from the State procurement list, choose appropriate supplies and**
28 **services for community service providers and individual with disability owned businesses**
29 **to offer for procurement;**

30 **(5) provide that the State procure those supplies and services from a**
31 **community service provider or an individual with disability owned business;**

1 (6) if supplies or services are not available for procurement from a unit of
2 the State government, determine whether supplies or services are available from a
3 community service provider or an individual with disability owned business;

4 (7) determine the fair market price of supplies and services that
5 community service providers and individual with disability owned businesses provide;

6 (8) in accordance with market conditions, adjust prices for the supplies and
7 services that community service providers and individual with disability owned businesses
8 provide; [and]

9 (9) at the request of a community service provider or an individual with
10 disability owned business, review and, if appropriate, change the price of a supply or
11 service; AND

12 **(10) ENSURE THAT BLIND INDUSTRIES AND SERVICES OF MARYLAND**
13 **OR A COMMUNITY SERVICE PROVIDER:**

14 **(I) PROVIDES SUPPLIES AND SERVICES DIRECTLY TO THE**
15 **STATE OR STATE AIDED OR CONTROLLED ENTITY; AND**

16 **(II) DOES NOT CONTRACT WITH A SUBCONTRACTOR TO PROVIDE**
17 **THE SUPPLIES AND SERVICES.**

18 (g) In addition to the duties specified under subsection (f) of this section, the
19 Committee shall:

20 (1) **(I)** establish and periodically review eligibility policies or guidelines
21 for participating community service providers and individual with disability owned
22 businesses;

23 **[(2)] (II)** maintain a current list of community service providers and
24 individual with disability owned businesses;

25 **[(3)] (III)** periodically review and revise its list of community service
26 providers and individual with disability owned businesses; and

27 **[(4)] (IV)** send any revised list to the Secretary of General Services who
28 shall make the list available to each person responsible for buying supplies or services for
29 the State or a State aided or controlled entity; AND

30 **(2) ANNUALLY REPORT TO THE GENERAL ASSEMBLY, IN**
31 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE LIST OF**
32 **CONTRACTS BEING PERFORMED BY BLIND INDUSTRIES AND SERVICES OF**

1 MARYLAND OR A COMMUNITY SERVICE PROVIDER THAT WERE PREVIOUSLY BEING
2 PERFORMED BY PRIVATE SECTOR ENTITIES.

3 (H) IF BLIND INDUSTRIES AND SERVICES OF MARYLAND OR A COMMUNITY
4 SERVICE PROVIDER DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (F)(1) OR
5 (10) OF THIS SECTION, THE STATE OR STATE AIDED OR CONTROLLED ENTITY TO
6 WHICH THE SUPPLIES AND SERVICES ARE PROVIDED SHALL ISSUE AN INVITATION
7 FOR BIDS OR A REQUEST FOR PROPOSALS FOR THE SUPPLIES OR SERVICES IN
8 ACCORDANCE WITH THIS DIVISION II.

9 (I) IN DETERMINING THE FAIR MARKET PRICE FOR SUPPLIES OR SERVICES
10 UNDER SUBSECTION (F) OF THIS SECTION, THE COMMITTEE SHALL CONSIDER, IN
11 THE ORDER LISTED:

12 (1) THE PRICE LAST PAID AS A RESULT OF A COMPETITIVE SELECTION
13 PROCESS FOR SUBSTANTIALLY SIMILAR SUPPLIES OR SERVICES, THAT INCLUDES:

14 (I) AN ADJUSTMENT FOR INFLATION, DEFLATION, OR OTHER
15 CHANGE IN MARKET CONDITIONS THAT DOES NOT ALTER THE LAST PRICE PAID BY
16 MORE THAN 5%; AND

17 (II) THE LIVING WAGE REQUIREMENTS OF TITLE 18 OF THIS
18 ARTICLE;

19 (2) THE MARKET PRICE FOR SUBSTANTIALLY SIMILAR SUPPLIES OR
20 SERVICES;

21 (3) A RELIABLE INDEPENDENT APPRAISAL OF THE VALUE OF
22 SUBSTANTIALLY SIMILAR SUPPLIES OR SERVICES;

23 (4) A REASONABLE ESTIMATE OF THE COST OF SUBSTANTIALLY
24 SIMILAR SUPPLIES OR SERVICES MADE BY THE PROCUREMENT UNIT OR OTHER
25 RELEVANT INFORMATION SUPPLIED BY THE PROCUREMENT UNIT; AND

26 (5) THE COST OF THE SERVICES IF THE SERVICES WERE PERFORMED
27 BY STATE PERSONNEL.

28 18-102.

29 (b) This title does not apply to a contract:

30 (1) for services needed immediately to prevent or respond to an imminent
31 threat to public health or safety;

1 (2) with a public service company;

2 (3) **EXCEPT AS PROVIDED IN § 14-106(I) OF THIS ARTICLE**, with a
3 nonprofit organization;

4 (4) between units; or

5 (5) between a unit and a county or Baltimore City.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2018.