

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1552 (Delegate Reznik, *et al.*)
Health and Government Operations

**Procurement - Preferred Providers - Price Determinations, Work Opportunities,
and Subcontracting**

This bill requires a preferred provider under State procurement law to provide supplies and services directly to the State or a State-aided or -controlled entity without subcontracting for the supplies or services. The bill also requires that specified preferred providers ensure that at least 95% of the supplies and services they provide create work opportunities for the clientele they serve. If a specified preferred provider does not comply with these requirements, a State agency or State-aided or -controlled entity may conduct a competitive procurement. The bill also includes criteria for determining the prices of goods and services offered by preferred providers, and it requires preferred providers that are nonprofit organizations to abide by the State's living wage law.

Fiscal Summary

State Effect: Special fund revenues and expenditures decrease beginning in FY 2019, potentially significantly, for Maryland Correctional Enterprises (MCE), which may reduce civilian and inmate employment opportunities in correctional facilities. State expenditures (all funds) increase to the extent that prices for goods and services purchased from preferred providers increase as a result of the application of the living wage.

Local Effect: Expenditures increase for local governments that purchase goods and services from preferred providers. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The Pricing and Selection Committee for Blind Industries and Services of Maryland and the Employment Works Program must ensure, for each contract, that at least 95% of the supplies and services provided by Blind Industries and Services of Maryland (BISM) or a community service provider create work opportunities for individuals who have a mental or physical disability, including blindness, for which BISM or the community service provider was established to assist.

The committee must report annually to the General Assembly on the contracts being performed by BISM or a community service provider that were previously being performed by private-sector entities.

Current Law:

Preferred Providers

State procurement law defines a “preferred provider” to be a provider of supplies or services that is given preference in specified provisions of current State procurement law. Chapter 313 of 2016 consolidated certain procurement preferences such that, currently, a State or State-aided or -controlled entity must buy supplies and services from MCE first, then BISM, and finally the Employment Works Program. The Employment Works preference applies only if a community service provider or a business owned by an individual with a disability provides the supplies or services, neither MCE nor BISM can do so, and the State or a State-aided or -controlled entity is not required by law to buy the supplies or services from any other unit of State government. Only if none of those entities produces or provides the desired supplies or services may a State agency issue a competitive procurement.

Formerly known as State Use Industries, MCE provides work and job training for inmates incarcerated in correctional facilities. As noted in the Governor’s budget books, MCE produces goods and supplies services at a cost that does not exceed the prevailing average market price. These goods and services are used by local, State, and federal agencies; they are also available for use by charitable, civic, educational, fraternal, or religious organizations. Accordingly, the Governor’s fiscal 2019 budget includes \$59.2 million in special fund expenditures for MCE, all supported by revenues from the sale of goods and services.

BISM was established in 1908 as a nonprofit organization with a stated purpose of positively changing people’s attitudes about blindness. BISM maintains eight facilities, half of which are in Maryland, that employ 600 associates to manufacture and provide a

wide array of products and services. Its clients include the federal government, state governments, and commercial customers.

The Employment Works Program is established by statute within the Department of General Services to facilitate the distribution of procurement contracts for supplies and services among community service providers and businesses owned by individuals with disabilities. The Secretary of General Services must designate Maryland Works, Inc., or another appropriate entity, to facilitate the distribution of procurement contracts to community service providers that participate in Employment Works. Maryland Works is a statewide membership association of community service organizations that specialize in creating employment opportunities for individuals with disabilities. It serves over 17,000 Marylanders with disabilities, more than 11,000 of whom are in employment settings.

Chapter 415 of 2015 merged the Pricing Committee for BISM with the Pricing and Selection Committee for the Employment Works Program. The resulting Pricing and Selection Committee for BISM and the Employment Works Program consists of the following five members:

- Secretary of Transportation or designee;
- Secretary of General Services or designee;
- Secretary of Public Safety and Correctional Services or designee;
- Secretary of Labor, Licensing, and Regulation or designee; and
- Assistant Secretary for Vocational Rehabilitation within the Maryland State Department of Education.

The committee is charged with 13 tasks and responsibilities in statute, including determining the fair market prices of the items sold by BISM and Employment Works. The requirement for Maryland Works, as the coordinating entity for the Employment Works Program, to provide staff support to the pricing committee was maintained; however, the comparable requirement for BISM support was repealed.

Living Wage

Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a “living wage.” For fiscal 2008, the living wage was set at \$11.30 in Montgomery, Prince George’s, Howard, Anne Arundel, and Baltimore counties and Baltimore City (Tier 1). It was set at \$8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation. Effective September 28, 2017, the Tier 1 living wage is \$13.79 and the Tier 2 wage is \$10.36. Montgomery and Prince George’s counties and Baltimore City have local living wage

ordinances that apply to their procurement of services. The living wage law does not apply to State contracts with nonprofit organizations.

Background: According to a February 2016 performance audit by the Office of Legislative Audits (OLA), BISM's product sales for fiscal 2015 totaled \$84.0 million, of which approximately \$10.5 million came from sales to the State. BISM advises that, for fiscal 2016, the comparable figures are \$103.0 million in sales, including \$10.4 million to the State. OLA's report also indicates that, in fiscal 2015, BISM provided rehabilitation and training services to 784 persons, with the cost shared between the State (\$876,400) and BISM (\$703,100).

State Fiscal Effect: BISM advises that, since the enactment of Chapter 635 of 2017, it has made a significant effort to eliminate most of its subcontracting activities. Chapter 635 stated that an existing requirement that specified prime contractors procure janitorial products from BISM applies only if the products are made, manufactured, remanufactured, or assembled by BISM and are available from BISM. As BISM had relied to some extent on subcontractors to provide janitorial products and services, it has transitioned away from using them. As a result, BISM indicates that more than 95% of its supplies and services are provided directly by BISM, so the bill has minimal effect on that aspect of its work. BISM further indicates that all of its sales activities create work opportunities for its target population, so the bill's requirement that at least 95% of its sales activity create work activity for blind individuals has no practical effect.

By contrast, MCE advises that it relies extensively on subcontractors for a variety of supplies and services, including delivery services, furniture installation, and inmate footwear sales. An inability to rely on subcontractors for some of these supplies and services may affect MCE's ability to deliver its products, thereby reducing MCE's special fund revenues, and consequently reduce both civilian and inmate employment opportunities.

As nonprofit entities, both BISM and community service providers under Employment Works are exempt from the State's living wage requirement in paying their employees. To the extent that current wages are below living wage requirements, the cost of products and services provided by them likely increase as a result of the application of the living wage. As the State must purchase items produced by the preferred providers if they are available, State procurement expenditures likely increase substantially.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Blind Industries and Services; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2018
mm/ljm

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510