Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 59 (Senator Patterson)
Education, Health, and Environmental Affairs

State Procurement - Small Business Reserve Program

This bill (1) raises the goal for the Small Business Reserve (SBR) Program from 15% to 25% of the value of agency procurements and (2) requires agencies to apply a 5% price preference under SBR for "resident small businesses." The bill establishes that reciprocal price preferences in current law do not apply to SBR procurements. The bill applies only prospectively and has no effect on SBR procurements advertised to the public before its October 1, 2021 effective date.

Fiscal Summary

State Effect: Application of the 5% price preference increases the value of some State contracts (all funds) by as much as 5%, but a reliable determination of the proportion or value of contracts likely to be affected by the preference cannot be made. Raising the SBR goal also likely increases State contract costs because small businesses are less able to take advantage of economies of scale in providing supplies and services. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: "Resident small business" means a small business whose principal office is located in the State. "Principal office" means a primary place of business that is staffed on a regular basis to provide goods or services that are requested by a unit in an SBR procurement. It does not include a satellite office.

The 5% price preference for resident price preferences applies to all SBR-designated contracts. However, if the contract is awarded on the basis of the bid or proposal being the most favorable to the State within SBR (rather than based on price alone), the preference may not be applied if it conflicts with a federal law or grant affecting the procurement contract.

Current Law:

Small Business Reserve Program

SBR requires most State agencies to structure their procurements so that at least 15% of the total dollar value of their procurements is made directly to small businesses; Chapter 438 of 2017 raised the goal from 10% to 15%. Under regulations governing the program, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 15% of its forecasted spending to contracts for small businesses serving as prime contractors. Under Chapter 438, an agency can apply toward its total SBR participation goal only payments made under a contract that was *designated* as an SBR procurement (not all payments to small businesses). The Special Secretary of Small, Minority, and Women Business Affairs must, in consultation with the Attorney General, establish standards and guidelines for participation in SBR every five years.

Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business or a business other than a broker that is independently owned and operated, not a subsidiary of another firm, and not dominant in its field of operation. In addition, Chapters 538 and 539 of 2012 (as amended by Chapter 76 of 2014) established that, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did not employ more than 25 people in its retail operations; 50 people in either its wholesale or construction operations; or 100 people in either its service, manufacturing, or architectural and engineering operations; *or*
- average gross sales did not exceed $2.0 million for manufacturing operations, $3.0 million for retail operations, $4.0 million for wholesale operations, $4.5 million for architectural and engineering services, $7.0 million for construction operations, and $10.0 million for service operations.

Small businesses self-report their small business status by registering on eMaryland Marketplace Advantage, the State's online procurement portal. Chapter 119 of 2016 transferred responsibility for administering SBR from the Department General Services to the Governor's Office of Small, Minority, and Women Business Affairs and repealed its termination date, making the program permanent.

Reciprocal Preferences

In general, State procurement law does not authorize agencies to give preference to resident bidders or offerors over nonresident bidders or offerors. However, reciprocal preferences are allowed in instances where a nonresident bidder or offeror is from a state or jurisdiction that does give preference to resident bidders or offerors.

"Preference" is defined as a percentage preference, an employee residency requirement, or any other provision that favors a resident over a nonresident.

State agencies may apply reciprocal preferences when using either competitive sealed bidding or competitive sealed proposals to procure supplies or services, including architectural and engineering services, construction-related services, or energy performance contracts. For competitive sealed bidding, an agency may give a preference to a bidder from the State only if (1) the resident bidder is a responsible bidder; (2) the lowest responsive bid is by a bidder from another state; (3) the state in which the nonresident bidder is located gives a preference to its residents; and (4) the preference does not conflict with a federal law or grant affecting the contract.

For competitive sealed proposals, an agency may apply a preference to a resident offeror if (1) a responsible nonresident offeror submits a proposal; (2) the state in which the nonresident offeror is located gives a preference to its residents; and (3) the preference does not conflict with a federal law or grant affecting the contract.

Procuring agencies may request specified information from nonresident bidders or offerors regarding any resident preference given by the state in which they are located. The agencies may give the same preference given by the state in which the nonresident bidder or offeror is located.

A "responsive bid" is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids; "responsive offer" is not a defined term in State law. A "responsible bidder or offeror" is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

Small Business Effect: Small businesses in the State benefit from (1) a greater proportion of State contracts being designated for SBR and (2) the application of a 5% resident price preference on specified SBR procurements. However, to the extent that other states employ reciprocal preferences, small businesses may be disadvantaged if they pursue out-of-state procurements because Maryland's resident preference will trigger reciprocal resident preferences in other states (the bill prevents the State from applying a reciprocal preference to SBR procurements, but has no authority to prevent other states from applying their reciprocal preferences on Maryland vendors bidding on their contracts).

Additional Information

Prior Introductions: SB 772 of 2020 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1597, did not receive a hearing.

Designated Cross File: None.

Information Source(s): Governor's Office of Small, Minority, and Women Business Affairs; Department of General Services; Department of Legislative Services

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