

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 194

(Senators Hayes and M. Washington)

Budget and Taxation

Health and Government Operations

State Procurement - Preferred Provider Requirements - Waiver

This bill authorizes the Pricing and Selection Committee for Preferred Providers to grant a waiver, under specified conditions, to a State or State-aided or -controlled entity from the statutory requirement to purchase supplies or services first from Maryland Correctional Enterprises (MCE). It also requires MCE to report annually on the length of time between each order and delivery of supplies and services. The Department of General Services (DGS) must adopt regulations to implement the bill.

Fiscal Summary

State Effect: Potential significant nonbudgeted revenue decrease to the extent that waivers result in a significant decrease in total sales by MCE, potentially in excess of \$1.0 million, but a reliable estimate is not feasible. Potential significant decrease in expenditures (all funds) to the extent that agencies receive waivers and purchase goods and services at lower prices, but a reliable estimate is not feasible. MCE can provide the required report with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Pricing and Selection Committee for Preferred Providers may, on request, grant a waiver from the procurement preference for MCE if:

- MCE's price for the needed supplies or services is at least 10% above market rates for similar supplies and services; or

- the time at which the needed supplies and services would be delivered by MCE does not meet the entity's needs.

Current Law: 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 from Blind Industries and Services of Maryland, then from the Employment Works Program if a community service provider or an individual with a disability-owned business provides the supplies or services, in that order of preference. Only if none of those entities produces or provides the desired supplies or services may a State agency issue a competitive procurement.

The Pricing and Selection Committee for Preferred Providers must review and verify the prevailing average market prices, as proposed by MCE, when changes are made to the pricing of existing goods and services provided by MCE and for new goods or services that MCE intends to make available. DGS staffs the committee. State agencies must purchase goods and services from MCE only if the sale price does not exceed the prevailing average market price determined by the committee. If MCE is unable to provide any of the goods or services under the contract, MCE must notify the contracting unit so that appropriate alternative action may be taken.

State Fiscal Effect: MCE is a self-funded entity that relies on sales of goods and services to fund its operations. Although it already has a waiver process, the waivers authorized by the bill are broader in scope and have the potential to significantly affect its sales volume. However, in the absence of any experience, it is not possible to estimate the potential effect, as the waivers are discretionary. Total MCE sales in fiscal 2023 exceeded \$51.0 million, so the potential effect may be significant.

Waivers, to the extent they are granted, may also save State agencies money if they allow agencies to purchase goods and services at prices lower than those offered by MCE. However, in the absence of any experience, it is not possible to estimate how many waivers will be granted or how much agencies can save.

Small Business Effect: Small businesses that offer goods and services at prices lower than those available from MCE may benefit from increased sales to State agencies and State-aided or -controlled entities.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - January 15, 2024
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