

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 850

(Delegate Tomlinson, *et al.*)

Health and Government Operations

Budget and Taxation

State Procurement - Small Business Preference Procurement

This bill expands the Small Business Preference (SBP) Program to all Executive Branch units and agencies but repeals its application to the University System of Maryland (USM) and Morgan State University (MSU). It requires the Board of Public Works (BPW) to implement and oversee the program, and it authorizes each procurement unit to designate procurements for SBP with the approval of the head of the unit.

Fiscal Summary

State Effect: Procurement costs (all funds) may increase to the extent that application of the SBP price preferences results in agencies awarding contracts to small businesses that do not submit the lowest bid, but any effect is expected to be minimal due to agencies' prioritization of the Small Business Reserve (SBR) Program. The bill otherwise has no material effect on agencies' operations or finances. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law: Under the bill, BPW must specify, through regulation, the criteria that a business must meet to qualify as a small business and must adopt regulations to establish specified procedures for the operation of SBP.

Small Business Preference Program

Under current law, SBP applies to the procurement of supplies, services, and construction-related services by the:

- Department of General Services (DGS);
- Maryland Department of Transportation (MDOT);
- USM;
- MSU; and
- Department of Public Safety and Correctional Services, with respect to the construction of correctional facilities.

Under the program, a qualified small business may receive up to a 5% price preference, a veteran-owned small business may receive up to a 7% price preference, and a disabled veteran-owned small business may receive up to an 8% price preference on any contract that is designated as eligible under the program.

DGS, MDOT, USM, and MSU must each specify, by regulation, the criteria that a business must meet to qualify as a small business (*the bill* requires BPW to specify the criteria). DGS, MDOT, and USM may designate procurement of certain supplies, services, or construction-related services that have been requested (*the bill* extends this authority to each procurement unit).

USM and MSU are exempt from most provisions of State procurement law, except where otherwise specified. *The bill* repeals their designation as mandated participants in SBP; therefore, they no longer are required to participate in the program.

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 is *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.

USM, MSU, and St. Mary's College of Maryland are exempt from most provisions of State procurement law, including SBR.

Under SBR, a "small business" is defined as:

- a certified minority business enterprise (MBE);
- a veteran-owned small business enterprise; 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, to qualify as a small business, any 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 DGS to the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) and repealed its termination date, making the program permanent.

Governor's Executive Order

Executive Order 01.01.2021.01, signed by the Governor on January 6, 2021, requires that any procurement by an Executive Branch agency for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services with a total dollar value between \$50,000 and \$500,000 be designated for SBR, except for:

- procurements from a preferred provider;
- procurement involving expenditures of federal dollars, if inclusion in SBR conflicts with federal law or grant requirements;
- small procurements;
- procurements of human, social, cultural, or educational services; and

- certain term or master contracts, as determined by GOSBA and the Office of State Procurement (OSP).

A procurement is exempt from designation for SBR if GOSBA certifies, concurrently with the review of any waiver determinations for certified MBE contract goals, that it is not practicable to do so. OSP must assist GOSBA in establishing procedures and guidelines for the efficient exemption of procurements from SBR.

Small Business Effect: Small businesses bidding on State contracts may be more likely to be awarded the contracts due to the application of SBP price preferences.

Additional Comments: Chapter 6 of 2019 repealed the requirement that affected agencies report on their use of SBP (due largely to its lack of use), so recent performance data is not available. The final mandated report submitted by BPW (for fiscal 2017) included the following conclusion:

...no State agencies reported significant contract awards in FY 2017 based on application of the preference. This pattern has been consistent over the last seven fiscal years even as agencies have extended outreach and encouragement of small business participation. A primary reason for this is that the Small Business Reserve Program is a much more effective program for soliciting and awarding contracts to small businesses. With the recent changes to the Small Business Reserve Program, the Small Business Preference Program – which may be used only by certain agencies – has been left by the wayside; the effectiveness of the Preference Program in State procurements has become questionable.

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 Information Technology; Governor’s Office of Small, Minority, and Women Business Affairs; Department of Commerce; Maryland Department of Aging; Maryland Department of Emergency Management; University System of Maryland; Morgan State University; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Department of Legislative Services

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