

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 872

(Delegate Burns, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Contractor's Designation of Specific Subcontractor in Bid or
Proposal

This bill prohibits a prime contractor on State contracts from removing a subcontractor that was specified in a bid or proposal for a State contract without good cause.

Good cause is defined as the inability of a subcontractor to perform work for a contractor because the subcontractor (1) ceases to do business; (2) lacks the technical expertise or financial capability to do the work required by the contractor to complete the contract; (3) lacks a license to do the work that is required under the contract; or (4) loses its license to do work in the State because its license is suspended or revoked or for other reasons that are reviewed and approved in writing by the procurement officer and agency head.

Fiscal Summary

State Effect: The bill may significantly alter contractors' willingness to provide the names of subcontractors in bids and proposals, and could minimally increase State contract costs. Claims by subcontractors would be directly with contractors and would not be resolved through the State's contract claim resolution process.

Local Effect: None.

Small Business Effect: Potential significant.

Analysis

Current Law: There are no provisions in current law that prohibit a contractor from terminating subcontractors under any circumstances. Statute specifies prompt payment requirements between contractors and subcontractors.

Background: The Governor's Commission on Minority Business Reform has reviewed the State's Minority Business Enterprise (MBE) program and will be issuing its final report this spring. The commission briefed the Task Force to Study Efficiency in Procurement on its work regarding State contracts and practices currently in place that the commission believes is suppressing MBE participation in State contracts. The commission noted that vendors seeking State contracts will frequently add MBE certified subcontractors during the bid or proposal process. Once the contractor is awarded the contract, however, the commission notes that MBE subcontractors are often removed from the project by the contractor with no good cause shown. Contractors that briefed the task force also noted this practice with State construction contracts.

State Fiscal Effect: The Department of Budget and Management, the Maryland Department of Transportation (MDOT), and the University System of Maryland indicate that this bill, directly affecting only the vendor side of procurement, will not impact State procurement costs. The Department of General Services (DGS) also indicates that the current general conditions placed on contractors provide project managers and contractors with a sufficient level of flexibility to handle high-risk subcontractor problems. DGS believes that current practices are robust enough to ensure against high-risk subcontractors being a part of State contracts.

The Department of Legislative Services (DLS) notes that State contracting costs could increase because contractors may be unwilling to bid or respond to requests for proposals on projects if they will be locked in to particular subcontractors.

DLS does not concur with the DGS assessment regarding high-risk subcontractors. The provisions of this bill protect subcontractors from predatory business practices used by contractors to win State contracts by including MBE subcontractors in the bid or proposal and then dropping MBE subcontractors in favor of other, potentially cheaper non-MBE subcontractors. The bill does not impact the State's or contractors' ability to remove potentially high-risk subcontractors.

Small Business Effect: This bill would offer additional protections to small and minority businesses from prime contractors that would offer particular MBE subcontractors in a bid or offer to the State and then shop the work to other non-MBE subcontractors to reduce costs. The Maryland Associated Builders and Contractors

(MDABC) indicate that the hectic nature of the final hours before a bid is due, when subcontractors are providing their bids to the contractors, does not allow for sufficient review of subcontractor offers. MDABC notes that there is a real business distinction between bid-shopping and performing post-bid due diligence to determine if all subcontractors are able to handle the required elements of a project.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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