

Department of Legislative Services

Maryland General Assembly

2004 Session

FISCAL AND POLICY NOTE**Revised**

Senate Bill 904

(The President) (By Request – Administration)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement - Small Business Procurement Contracts - Reserve Preference

This Administration bill creates a small business reserve and requires specified agencies to award at least 10% of specified types of procurement contracts to small businesses. Small businesses are defined.

The bill terminates September 30, 2007.

Fiscal Summary

State Effect: Potential significant increase in State contract costs. General fund expenditures could increase by \$178,200 in FY 2005. Special fund and higher education fund expenditures could each increase by \$46,400 in FY 2005. Future year costs reflect annualization, inflation, and the September 30, 2007 sunset of the bill.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	178,200	218,100	230,500	60,900	0
SF Expenditure	46,400	57,000	60,200	15,900	0
GF/SF/FF Exp.	-	-	-	-	-
Higher Ed Exp.	46,400	57,000	60,200	15,900	0
Net Effect	(\$271,000)	(\$332,100)	(\$350,900)	(\$92,700)	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration.

Analysis

Bill Summary: Specified units are required to award at least 10% of the units' total dollar value of goods, supplies, services, maintenance, construction, construction-related, architectural service, and engineering service contracts to small businesses. The reserve does not apply to: (1) procurements that are subject to existing preferences for State Use Industries, Blind Industries and Services of Maryland, and sheltered workshops; and (2) the value of contracts for which this program would represent a violation of federal law. The Department of General Services (DGS) is required to adopt regulations to establish a comprehensive bidders list of small businesses. Units are required to ensure compliance with these regulations.

The bill specifies that any procurement of goods, supplies, services, maintenance, construction, construction-related, architectural service, and engineering service contracts is eligible for inclusion in the small business reserve. Procurement officers of designated procurement units are required to award a contract to a small business if a small business submits a responsive bid and: (1) is the lowest bid price; (2) if the invitation for bids so provides, is the lowest evaluated bid price; or (3) is the bid or proposal most favorable to the State within the small business reserve.

Designated procurement units are defined as follows:

- State Treasurer;
- Department of Budget and Management (DBM);
- Department of Business and Economic Development (DBED);
- Department of the Environment;
- Department of General Services (DGS);
- Department of Health and Mental Hygiene (DHMH);
- Department of Housing and Community Development;
- Department of Human Resources;
- Department of Juvenile Services;
- Department of Labor, Licensing, and Regulation;
- Department of Natural Resources;
- Maryland State Department of Education (MSDE);
- Department of State Police;
- Department of Public Safety and Correctional Services (DPSCS);
- Maryland Department of Transportation (MDOT);

- University System of Maryland (USM);
- Maryland Port Commission;
- State Retirement Agency;
- Maryland Insurance Administration;
- Maryland Stadium Authority;
- State Lottery Agency; and
- Morgan State University.

Small businesses include all businesses certified by MDOT as a Minority Business Enterprise (MBE). A small business must be independently owned and operated, not the subsidiary of another business, and not dominant in its field of operation. The bill defines the categories of wholesale, retail, manufacturing, service, and construction. Categories of businesses are restricted by the number of persons employed and the gross sales in the previous fiscal year from operations in each category as follows:

- wholesale operations – not more than 50 persons and an average \$2 million in sales in the most recently completed three fiscal years;
- retail operations – not more than 25 persons and an average \$2 million in sales in the most recently completed three fiscal years;
- manufacturing operations – not more than 100 persons and an average \$2 million in sales in the most recently completed three fiscal years;
- service operations – not more than 100 persons and an average \$2 million in sales in the most recently completed three fiscal years; and
- construction operations – not more than 50 persons and an average \$7 million in sales in the most recently completed three fiscal years.

Specified agencies are required to report by October 1 each year to the Board of Public Works (BPW) on the operation and effectiveness of the program. BPW is required to report the consolidated agency reports to the Legislative Policy Committee 60 days after receipt of all reports from specified agencies.

Current Law: State procurement law already has a small business price preference. The program requires the Secretaries of General Services and Transportation and the Chancellor of USM to establish a price preference, not to exceed 5%, for small businesses. Contracts designated for small business procurement must be awarded to the small business that: (1) is a responsible bidder; and (2) submits the lowest responsive bid from a small business if the difference between that bid and the lowest responsive non-small business bid is less than the established price preference. The reporting

requirements in this bill exist in current law for the Secretaries of General Services and Transportation and the Chancellor.

Background: The Governor's Commission on Minority Business Reform has reviewed the State's MBE program and has issued its final report. The commission recommended a one-year pilot program for a small business reserve program modeled after federal procurement programs. The report recommends that the Governor's Office of Minority Affairs coordinate the pilot program with BPW and the major procuring agencies.

The commission held four public hearings and received written and oral testimonies from over 200 people. The commission focused its review of the MBE Program and small business procurement on: (1) strengthening the Office of Minority Affairs to carry out its mandate including resources for enforcement of State law, training, and evaluation of the MBE program and small business procurement; (2) assisting business development by creating a one-stop shop with which small and minority business could interact with the State, enforcing existing law, changing the procurement system, and providing more support for business development; (3) improving MBE and small business access to capital; and (4) providing incentives for certification as an MBE.

The commission concluded that the greatest barriers to the current MBE program are a lack of accountability, uniformity, and consistency in executing the program. The commission's report stressed that training of procurement professionals is a critical component of strengthening the program.

State Expenditures: MSDE estimates it will require one additional position to gather and compile records and implement the program for its 800 contracts for services, 13,500 purchase orders for supplies and instructional materials, and 15,000 credit card purchases. The Office of Contract Policy, Management, and Procurement in DHMH estimates that one additional procurement officer would be required due to additional workload for review of procurements. DBM, DGS, and MDOT estimated no fiscal impact from the provisions of the bill.

USM estimates that procurement costs could increase by 5% to 8% due to increased small business participation resulting in higher costs for goods and services. USM indicated that multiple institutions within the system will combine buying power and procure through cooperative agreements. Smaller businesses are often unable to meet the needs of a multi-institution, multi-geographic region contract as cost-effectively as larger firms. USM estimated that the reporting requirements would create additional administrative costs but was unable to reliably estimate the impact.

The Department of Legislative Service (DLS) advises that DBM, DGS, USM, and MDOT positions would also be required because of the scope of procurements from these agencies, DBM's role as designated control agency of all service contracts, and DGS's role as control agency for supplies and construction procurements. DLS notes that the bill specifically requires designated agencies to award at least 10% of contracts to small businesses. This requirement would be significantly greater than a part-time need for data collection and could include internal auditing, continuing staff training and outreach by agency procurement officers to small businesses, and interagency work to coordinate purchasing.

General fund expenditures could increase by an estimated \$178,189, special fund expenditures could increase by an estimated \$46,388, and higher education fund expenditures could increase by an estimated \$46,388 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one agency procurement specialist lead in DBM, DGS, and DHMH (three total, all general fund), one agency procurement specialist lead in USM (higher education funds), one agency buyer in MSDE (general fund), and one agency procurement specialist lead in MDOT (special fund) to implement the small business reserve program, monitor agency procurements from small businesses, ensure agency compliance, and produce required reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$229,579
Operating Expenses	<u>41,384</u>
Total FY 2005 State Expenditures	\$270,963

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. The State effect will be reduced to one-quarter of the annual effect in fiscal 2008 due to the bill's September 30, 2007 sunset date.

Small Business Effect: The U.S. Census Bureau's (the bureau) 1997 Economic Census estimated there were 400,203 businesses in Maryland. The bureau classified 82,619 of those businesses as minority and 115,801 as women-owned. According to the bureau, over 95% of Maryland firms (excluding sole proprietorships) had fewer than 100 employees and over 85% had fewer than 20 employees in 2000. The provisions of this bill would improve the chances of small businesses receiving State contracts in a wide variety of contract categories. Small businesses will recognize increased revenues from State contracts. DBED notes that the creation of reserves for small businesses will create

a separate defined market in which small businesses will compete against each other, not against large firms, for State contracts.

Additional Comments: *The following agencies did not respond to requests for information: State Treasurer; Department of Labor, Licensing, and Regulation; Department of State Police; Maryland Stadium Authority; and Morgan State University.*

Additional Information

Prior Introductions: None.

Cross File: HB 1487 (The Speaker and the Minority Leader) (By Request – Administration) – Health and Government Operations.

Information Source(s): Department of General Services, Department of Budget and Management, Maryland Department of Transportation, Department of Natural Resources, Maryland Department of the Environment, Maryland State Department of Education, Department of Health and Mental Hygiene, University System of Maryland, State Retirement Agency, Department of Business and Economic Development, Department of Legislative Services

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