

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 725 (Delegate Morhaim, *et al.*)  
 Health and Government Operations Education, Health, and Environmental Affairs

**Maryland Development Authority - Management and Procurement Policies and Procedures**

This bill renames the Maryland Stadium Authority (MSA) to the Maryland Development Authority (MDA) and requires MDA to develop policies and procedures for procurements. Policies and procedures adopted by MDA must be approved by the Board of Public Works (BPW) and the Administrative, Executive, and Legislative Review (AELR) Committee.

The bill is effective June 1, 2004. MDA is required to adopt policies and procedures on or before July 1, 2004 and report on specified topics by December 1, 2004.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$74,400 in FY 2005 to implement procurement polices and procedures in MDA. Future year expenditures reflect annualization and inflation. General, special, and nonbudgeted funds could decrease significantly due to improved competition for MDA procurements.

| (in dollars)   | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|----------------|------------|------------|------------|------------|------------|
| Revenues       | \$0        | \$0        | \$0        | \$0        | \$0        |
| GF Expenditure | 74,400     | 71,300     | 75,100     | 79,200     | 83,600     |
| GF/SF Exp.     | (-)        | (-)        | (-)        | (-)        | (-)        |
| NonBud Exp.    | (-)        | (-)        | (-)        | (-)        | (-)        |
| Net Effect     | (\$74,400) | (\$71,300) | (\$75,100) | (\$79,200) | (\$83,600) |

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

**Local Effect:** None.

**Small Business Effect:** Potential significant.

## Analysis

**Bill Summary:** Voting membership on the board of MDA is increased from seven to 10. The three additional members are: (1) the State Treasurer or their designee; (2) the Secretary of Budget and Management or their designee; and (3) a member appointed jointly by the President of the Senate and the Speaker of the House of Delegates. The bill also adds one member of the Senate and one member of the House of Delegates as nonvoting members. The bill alters quorum and majority voting language from four to six members.

MDA is required to submit a report by December 1, 2004 to the House Health and Government Operations Committee and the Senate Education, Health, and Environmental Affairs Committee that includes: (1) a summary of the progress made by MDA in correcting the deficiencies identified by the Office of Legislative Audits (OLA) in the MSA Audit Report dated February 2004; (2) a summary of progress made by MDA in implementing the procurement policies and procedures developed in accordance with this bill; (3) a summary of MDA's minority business enterprise (MBE) outreach efforts and progress made toward meeting or exceeding MBE participation goals; and (4) the development of a written policy on employee compensation practices and procedures, including procedures for the awarding of bonuses.

The bill may not be applied to any pending or existing contracts, agreements, grants, or other obligations entered into by MSA prior to June 1, 2004. All pending or existing contracts, agreements, grants, or other obligations entered into by MSA prior to June 1, 2004 are considered valid, legal, and binding obligations of MDA, enforceable in accordance with their terms.

**Current Law:** MSA must currently comply with the State's MBE program.

The purposes and policies of the procurement law include: (1) providing for increased confidence in State procurement; (2) ensuring fair and equitable treatment of all persons who deal with the State procurement system; (3) providing safeguards for maintaining a State procurement system of quality and integrity; (4) fostering effective broad-based competition in the State through support of the free enterprise system; (5) promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials; (6) providing increased economy in the State procurement system; (7) getting the maximum benefit from the purchasing power of the State; (8) simplifying, clarifying, and modernizing the law that governs State procurement; (9) allowing the continued development of procurement regulations, policies, and practices in the State; and (10) promoting development of uniform State procurement procedures to the extent possible.

MDA will be able to use several procurement methods authorized in SFP including: (1) competitive sealed bids; (2) negotiated award after unsuccessful competitive sealed bidding; (3) competitive sealed proposals; (4) noncompetitive negotiation for certain human, social, or education services; (5) sole source procurement; (6) emergency procurements; (7) expedited procurements; (8) small procurements (under \$25,000); (9) intergovernmental cooperative purchasing; (10) unsolicited proposals; and (11) auction bids (for supplies totaling \$1,000,000 or more only).

Competitive sealed bidding is the preferred method of contract award unless one of the other methods is specifically authorized. Before a procurement officer may use a procurement method other than competitive sealed bidding (with the exception of the procurement of human, social, cultural, or educational services, and for the lease of real property where the preferred method is competitive sealed proposals) certain criteria must be satisfied.

**Background:** MSA was established in 1986 as an independent unit in the Executive Department to be responsible for the construction, operation, and maintenance of facilities for use by professional baseball and/or football teams. In 1992, legislation was enacted which assigned to the authority the responsibility for expansion of the Baltimore City Convention Center (BCCC). The authority's responsibility was further extended in 1995 when legislation was enacted to have the authority participate in and manage construction of an expansion of the Ocean City Convention Center (OCCC). Legislation enacted in 1996 authorized the authority to participate with Montgomery County in the construction of a conference center. Legislation enacted in 2000 authorized the authority to participate in the construction of the Hippodrome Performing Arts Center. Authorizing language in the capital budget bill of 1998 allows MSA to contract with local governments and State agencies to manage construction projects, provided that the contracting agency can fund the project and the budget committees have 30 days to review and comment on the proposed work.

A recent audit by OLA found that the agency has not formally established written procurement policies and that construction contracts in excess of \$66 million were awarded without being publicly advertised. OLA found that the agency invited only specific firms to bid on several contracts and that documentation of bid openings have not been retained. Contracts valued at \$775,000 and \$938,000 were not competitively bid at all. MSA responded that its exemption allows rapid completion of time-critical projects and that the review of MSA contracts by BPW at the award stage is sufficient oversight of MSA procurements.

The Commission on the Structure and Efficiency of State Government (Mandel Commission) recommended that the Interagency Committee for Public School Construction (IAC) should be merged into MSA and be renamed the Maryland

Construction Management Authority. The Task Force to Study Efficiency in Procurement (created by Chapter 386 of 2003) studied exemptions and centralization of the procurement process in Maryland. The task force recommended that a centralization study be undertaken to determine where the State could improve efficiencies within and across departments and agencies.

**State Fiscal Effect:** General fund expenditures could increase by an estimated \$74,352 in fiscal 2005, which accounts for the bill's June 1, 2004 effective date. This estimate reflects the cost of hiring one MDA procurement officer to carry out the policies and procedures developed by the board of MDA. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                 |
|---|-----------------|
| Salary and Fringe Benefits              | \$65,522        |
| Operating Expenses                      | <u>8,830</u>    |
| <b>Total FY 2005 State Expenditures</b> | <b>\$74,352</b> |

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. The agency will also need to replace office signage, office stationary, and business cards for the agency; and employee uniforms for 61 facilities staff. MSA estimates \$10,000 in office signage, \$10,000 in office supplies, and \$30,000 in employee uniforms. The Department of Legislative Services (DLS) advises that the agency has an annual budget for supplies and uniforms and can replace the MSA items with MDA items in the normal course of business. DLS further advises that office signage and web site title changes required could be handled within existing resources.

**Small Business Effect:** To the extent that the authority has not been competitively bidding contracts, small businesses may have increased opportunities to participate in State contracts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Food Center Authority, Department of General Services, Board of Public Works, Department of Business and Economic Development, Blind Industries and Services, Department of Budget and Management, Department of Legislative Services

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