

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 537 (Delegate Kelly)
Economic Matters

Maryland Economic Development Corporation - Exemptions - Procurement

This bill repeals the Maryland Economic Development Corporation's (MEDCO) exemption from State procurement law.

Fiscal Summary

State Effect: No effect on State finances. Potential significant impact on the ability of MEDCO to enter into successful economic development agreements.

Local Effect: Potential significant.

Small Business Effect: Potential meaningful.

Analysis

Current Law: MEDCO was created in 1984 to enable the State to develop property for economic purposes which serve the public interest. MEDCO was originally authorized to develop vacant or unused industrial sites and facilities and other economic resources in economically distressed areas of the State (Chapter 498 of 1984). Chapter 338 of 2001 expanded MEDCO's authorized activities to include property throughout the State as long as the private sector has shown no significant interest or development capability.

Maryland's current procurement laws were drafted to ensure that State contract awards are based on technical merit and lowest price, that State contracts are awarded on the basis of effective competition between vendors, and that the award of contracts is immune from inappropriate influences. The current law was modeled after the Model Procurement Code developed by the American Bar Association and was enacted in 1980.

The Board of Public Works (BPW) delegates procurement authority to various control agencies including the Department of Budget and Management (DBM) for services and information technology contracts; the Department General Services (DGS) for nonhighway and nonprison construction, the purchase of commodities, and the lease of real property; and the State Treasurer for banking, financial services, and insurance.

Background: Bonds issued by MEDCO are not a debt of the State nor is their repayment an obligation of the State. All bonds and interest are repaid by revenues generated by the private developer from the projects financed. MEDCO does not receive any financial support from State sources. In some instances, MEDCO will own a particular project and lease property back to the developer. This enables the private developer to borrow money for other purposes since it would not be required to carry the debt from the property on its books.

MEDCO develops property that is leased to others under favorable terms to encourage business activity and commerce. MEDCO also makes loans to companies to maintain and develop facilities and helps State and local economic development agencies expand, modernize, and retain businesses, and attract new ones. To finance this assistance, MEDCO borrows money and issues bonds. To date, MEDCO has completed over 150 projects since its inception in 1984. Projects have included several pieces of the expansion of BWI Airport in conjunction with the Maryland Aviation Administration, several student housing projects in conjunction with various institutions of the University System of Maryland, the American National Red Cross, and a log milling facility for Harwood Mills, Inc. in Queen Anne's County, an industrial park for Allegany County, and others.

MEDCO indicates that it currently engages in competitive sealed bid and proposal processes for its own procurements. MEDCO also utilizes the competitive sealed bidding process to select contractors for its One Maryland Program for land development and/or construction of "flexible use buildings" in Somerset, Worcester, Dorchester, Allegany, and Garrett counties. MEDCO has also used a competitive bid process to select contractors for projects for which the recipient of financing has not already, or is unable to, engage services. MEDCO cites the Pier A & B expansion at BWI as an instance of this type of activity.

State Fiscal Effect: Funds provided through MEDCO financing agreements that are used by developers are not State funds. If MEDCO were subject to State procurement laws and regulations, it would be unable to provide rapid financing to development projects in economically distressed parts of Maryland. MEDCO's role as a financier of private development projects and the transparent competition rationale for State procurement laws are not compatible. MEDCO is exempt from most laws dealing with

State finances and procurement with State funds because it has no State funds. The corporation is funded through a fee on the financing it provides to developers. MEDCO indicates that it would be unable to meet its primary mission if it were subject to State procurement laws. MEDCO also indicates that if it were required to comply with all State procurement laws, it would require two new positions to administer the provisions of this bill. MEDCO employees are not State employees, and the corporation is a nonbudgeted agency.

Both DBM and DGS indicate that this bill will not have an operational impact on their roles as control agencies and primary procurement units. Any additional procurements that the control agencies are required to assist MEDCO in completing could be handled with existing resources.

Local Fiscal Effect: To the extent that MEDCO is unable to complete its primary mission, and that local governments formerly availed themselves of financing opportunities through MEDCO, local governments may have more difficulty completing economic development projects.

Small Business Effect: To the extent that subjecting MEDCO to procurement laws reduces its ability to provide financial assistance to small businesses, the negative impact could be significant. To the extent that MEDCO is required to increase competition for its contracts that are related to its operations, small businesses may have greater access to contracts.

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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