

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 719

(Delegate Morhaim, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Debarment - Causes

This bill specifies that a person may be debarred from entering into a contract with the State if the person, an officer, partner, controlling stockholder or principal of that person, or any other person substantially involved in that person's contracting activities has been debarred from federal contracts under 48CFR of federal acquisition regulations.

Fiscal Summary

State Effect: The bill would not materially affect State government operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: A person may be debarred from entering into a contract with the State on several grounds, including conviction for a variety of specified offenses, an admission in writing or under oath of an act that constitutes grounds for conviction of certain offenses, being a successor, assignee, subsidiary, or affiliate of a debarred person, or operating in a manner designed to evade or defeat the purpose of the State Finance and Procurement Article. A person may also be debarred from entering into a contract with the State for any cause the Board of Public Works (BPW) determines to be so serious as to affect the integrity of the procurement process.

Background: Section 48CFR 9.406.2 permits a debarring official to debar a contractor for:

- commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- violation of federal or state antitrust statutes relating to the submission of offers;
- commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- intentionally affixing a label bearing a “Made in America” inscription to a product sold in or shipped to the U.S. or its outlying areas, when the product was not made in the U.S. or its outlying areas;
- commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor;
- violation of the terms of a government contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one or more contracts; or a history of failure to perform, or of unsatisfactory performance of, one or more contracts;
- violations of the Drug-Free Workplace Act of 1988;
- commission of an unfair trade practice;
- failure to comply with Immigration and Nationality Act employment provisions; and
- any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

BPW indicates it is aware of over 700 Maryland companies that are debarred under 48CFR. Neither BPW nor the Department of General Services know the extent to which any of those businesses are contracting with the State of Maryland.

State Expenditures: The bill is not expected to result in a significant increase in the number of debarment actions. BPW advises that it typically reviews three to five debarment actions each year.

The Office of the Attorney General (OAG) advises that a part-time Assistant Attorney General will be required to handle an increased workload. The Department of Legislative Services (DLS) disagrees with this assessment of increased costs because the bill does not significantly broaden the terms for debarment, and believes that the bill’s requirements could be handled with existing resources. DLS notes that the bill is permissive and does not require OAG to enter into debarment proceedings with any

company that is debarred under 48CFR and that OAG can already enter into debarment proceedings for many of the offenses defined in 48CFR. In the event that the bill does result in a significant increase in debarment actions in the future, however, additional resources may be needed in OAG.

Additional Information

Prior Introductions: In 2003, SB 122, a similar bill, was vetoed by the Governor.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, Department of Budget and Management, Office of the Attorney General, Department of Legislative Services

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