

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 234

(Senator Brochin, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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 federal acquisition regulations (48 CFR Chapter 1). The bill provides that the State debarment terminates automatically if the debarred person provides sufficient documentation to the Board of Public Works (BPW) that the federal debarment has been reversed or otherwise declared void.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: State law provides that 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 BPW determines to be so serious as to affect the integrity of the procurement process.

Background: Section 48 CFR 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 nearly 800 Maryland companies that are debarred under 48 CFR 9.406.2. The extent to which any of those businesses are contracting with the State of Maryland is unknown.

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 paralegal position 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 48 CFR and that OAG can already enter into debarment proceedings for many of the offenses defined in 48 CFR. Finally, the law currently provides that any offense "so serious as to affect the integrity of the procurement process" is grounds for debarment.

Additional Information

Prior Introductions: An identical bill, HB 719 of 2004, passed the House, but no action was taken by the Senate Education, Health, and Environmental Affairs Committee.

Cross File: HB 262 (Delegate Morhaim) – Health and Government Operations.

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 Public Safety and Correctional Services, Office of the Attorney General, Department of Legislative Services

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