

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1293 (Delegate McIntosh, *et al.*)
(Chairman, Joint Commission on the Maryland Port Administration)
Environmental Matters and Health and Government Operations

Procurement - Maryland Port Administration - Exemption

This bill enables the Maryland Port Commission to exempt most procurements by the Maryland Port Administration from State procurement law and from oversight and approval by the Board of Public Works.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures could decrease to the extent that MPA can realize savings by streamlining procurement processes, but any such impact is expected to be minimal. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a new category of MPA procurements called maritime enterprise procurements, which are defined as procurements deemed by MPC to be necessary to attract, retain, support, or provide security for maritime business at the Port of Baltimore. It allows MPA to use maritime enterprise procurements to procure architectural or engineering services, construction and construction-related services, energy performance contracts, leases of real property as lessee, maintenance, services, and supplies other than insurance.

The bill further provides that maritime enterprise procurements are exempt from most State procurement laws, except for those governing:

- collusion;
- falsification of material facts;
- nondiscrimination;
- retainage;
- minority business participation;
- small business reserve program;
- procurement contract administration;
- dispute resolution;
- suspension and debarment of contractors; and
- notice of political contributions.

The bill exempts MPA's capital expenditures, public improvement contracts, and printing and supply contracts from review by the Department of General Services and approval by BPW. It also exempts vehicle and telecommunications procurements by MPA from oversight by the Department of Budget and Management and BPW. Finally, the bill does not allow bid protests related to maritime enterprise procurements to be appealed to the Board of Contract Appeals. Instead, it establishes MPC as the final arbiter of bid protests between MPA and prospective bidders.

Current Law: In general, DBM oversees and approves State agency procurement of information technology systems and services and leases and purchases of motor vehicles, subject to BPW concurrence. DGS oversees property leases as well as procurement of supplies, construction, construction-related services, and architectural and engineering services. Moreover, most State contracts and land sales are subject to BPW approval.

Certain State agencies, most notably the University System of Maryland and the Maryland Transportation Authority (for the construction of roads, bridges, and highways), are exempt from most State procurement rules. In addition, Section 12-107 of the State Finance and Procurement Article allows MPC to procure supplies, services, construction, and architectural and engineering services related to port activities without approval from any other State agency.

The Board of Contract Appeals is responsible for hearing and deciding most appeals arising from procurement bid protests and contract claims. Prospective bidders initially file bid protests with the procurement office of the State agency sponsoring the procurement. If they do not prevail in their initial protest, they may appeal the agency's

decision to the Board of Contract Appeals, whose ruling is considered the final administrative decision of the State.

Background: A May 2005 study by Mercer Management Consulting highlighted numerous challenges confronting the Port of Baltimore in its quest to remain competitive in an increasingly challenging market. It identified overly bureaucratic procurement procedures as one factor that could significantly affect the port's competitiveness. In particular, it indicated that bureaucracy hindered the port's ability to respond quickly to circumstances in a fluid market.

Mercer noted that some of the bureaucratic delays were internal to MPA, while others involved what it termed to be excessive involvement of other State agencies in MPA's procurement activities. In addition to recommending ways in which MPA could expedite procurement timelines and transparency, it specifically recommended eliminating the involvement of outside agencies, including BPW, from the procurement process. In 2005, the General Assembly's Joint Commission on the Maryland Port Administration recommended granting MPA certain exemptions from State procurement law for maritime enterprise procurements.

Additional Information

Prior Introductions: None.

Cross File: SB 834 (Senator Middleton) (Chairman, Joint Commission on the Maryland Port Administration) – Education, Health, and Environmental Affairs and Finance.

Information Source(s): Department of General Services, Maryland Department of Transportation, Department of Legislative Services

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