

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 1300 (Delegate Taylor, *et al.*)  
Health and Government Operations

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**State Procurement - Small Business Preference Program - Expansion**

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This bill expands the State's Small Business Preference Program (SBP) to include all State procurement units.

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**Fiscal Summary**

**State Effect:** Negligible increase in State contract costs due to the application of a small business price preference on designated contract awards. State procurement units can handle the bill's requirements with existing resources.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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**Analysis**

**Current Law:** SBP was established in 1988 and applies to procurement of supplies, services, and construction-related services by the Department of General Services (DGS), the Maryland Department of Transportation (MDOT), Morgan State University (MSU), and, with respect only to the construction of a State correctional facility, the Department of Public Safety and Correctional Services (DPSCS). Each agency (except DPSCS) is authorized to define what constitutes a small business for the purpose of the program, and the criteria may vary among industries to reflect their particular characteristics. DGS and MDOT are also authorized to designate procurements that qualify under SBP.

Although the University System of Maryland (USM) was originally required to participate in SBP, Chapter 515 of 1999 exempted USM from most State procurement law, including SBP.

Both MDOT and DGS have established a base small business price preference of 5% for all SBP contracts. In accordance with Chapter 695 of 2008, SBP allows DGS and MDOT to establish a price preference of not more than 8% for small businesses that bid on qualified procurements, which includes a 2% price preference for veteran-owned small businesses and a 3% price preference for disabled veteran-owned small businesses. This allows each agency to award a procurement contract to a responsible small business if the gap between the small business bid and the lowest bid from a nonsmall business is less than the established price preference.

Chapter 75 of 2004 established the Small Business Reserve Program (SBR). For the purpose of the program, the definition of small businesses varies by sector, but is based on firms' annual gross sales and number of employees. SBR requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Authorization for SBR terminates September 30, 2010.

USM, MSU, and St. Mary's College of Maryland are exempt from most provisions of State procurement law; however, MSU became subject to SBP in 2006. State law also exempts other agencies, in whole or in part, from State procurement law, including:

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;

- Maryland Stadium Authority; and
- State Retirement and Pension System.

**Background:** In recent years, only a tiny fraction of procurement contracts entered into by affected agencies have resulted from SBP. In fiscal 2007, the most recent data available, MDOT designated 26 contracts valued at \$178,781 as SBP-eligible, but did not report the number that were actually awarded subject to the 5% price preference. In fiscal 2007, DGS designated all commodity procurements to be SBP-eligible, but awarded just two contracts valued at \$278,330 based on the 5% price preference. According to DGS, the application of the price preference increased the cost of the procurements by a total of \$6,467. Fiscal 2007 was MSU's first year in SBP, and it did not award any contracts under the program.

**State Fiscal Effect:** DGS certifies small businesses for the State and maintains a list of certified small businesses. Legislative Services expects that all procurement units will require small businesses to be certified by DGS to qualify for SBP contract awards. To the extent that agencies may have to issue new regulations that establish unique criteria for the designation of small businesses in particular sectors, they can do so with existing resources.

The provisions of SBP indicate that State contract costs may increase by at least 5% and as much as 8%. However, recent experience by MDOT and DGS indicates that the program's actual effect on contract costs is minimal. Given the discretion given to participating agencies to designate SBP-eligible procurements, the small number of SBP-designated procurements in recent years, and the even smaller number of awards based on the SBP price preferences, Legislative Services believes that the expansion of SBP to all procurement units has a negligible effect on State procurement costs.

**Small Business Effect:** Small businesses have increased opportunity to win State contracts that are designated as SBP-eligible.

**Additional Comments:** MDOT and DGS indicate in their annual SBP report to the Board of Public Works that the vast majority of their contract awards to small businesses are done outside the scope of the Small Business Preference Program. MDOT's report specifically notes that most of its contract awards to small businesses are done under the Small Business *Reserve* Program, which already applies to virtually all State procurement units, including USM.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Business and Economic Development; Board of Public Works; Department of Budget and Management; Department of Human Resources; Department of Natural Resources; Maryland State Department of Education; Maryland Department of the Environment; Maryland Department of Planning; Department of General Services; Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of State Police; Morgan State University; Maryland Department of Aging; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Department of Veterans Affairs; Department of Legislative Services

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