

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 533 (Delegates Morhaim and Weldon)
Health and Government Operations Education, Health, and Environmental Affairs

Cooperative Purchasing Agreements - Requirements and Expansion of Use

This bill requires State and local procurement units to facilitate participation in cooperative purchasing agreements by State and local governments and nonprofit organizations.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: Potential minimal decrease in State expenditures (all funds) for goods and services. The bill's exemptions allow State procurement units to avoid the use of cooperative purchasing agreements when they are not in the State's best interest.

Local Effect: Potential minimal decrease in local expenditures for goods and services. The bill may give local governments access to lower-cost supplies and services provided in State or other local contracts. It may also reduce competition for local procurements.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Each State or local procurement contract for supplies or services must include a provision facilitating the participation of other State and local entities and nonprofit organizations. State and local entities are authorized to enter into cooperative agreements with each other. State entities include departments, boards, commissions, agencies, and subunits of the Executive Branch. Local entities include counties,

municipalities, bicounty or multicounty agencies, public authorities, special taxing districts, boards of education, library boards, and other political subdivisions. Nonprofit organizations may also participate.

The bill exempts contracts for capital construction and improvements or other unique purchases and procurements valued at less than \$100,000. It also does not apply if the State or local entity determines that including the cooperative purchasing provision:

- undermines the desired timing or effect of the procurement;
- interferes with the State's or local entity's ability to meet goals established under the Minority Business Enterprise (MBE) program, the Small Business Reserve (SBR) Program, or similar minority or small business programs operated by a local government; or
- is not in the best interest of the entity.

Local entities may join existing contracts drafted in accordance with the bill if participation:

- provides a cost savings in purchase price or administrative burden; or
- furthers other goals, including operational and energy-efficiency goals related to the purchase, operation, or maintenance of the supply or service.

The departments of General Services (DGS), Budget and Management (DBM), Transportation (MDOT), and Information Technology (DoIT) must together publish on a web site lists of all procurement solicitations reasonably expected to have a value of at least \$100,000 that are currently reported to the Governor's Office of Minority Affairs (GOMA) at the beginning of each fiscal year.

The bill also requires the Board of Public Works' Procurement Advisory Council to submit a report on the efficiency of cooperative purchasing and on strategies for maximizing the participation of small businesses in intergovernmental cooperative purchasing procurements not solicited on eMaryland Marketplace to specified committees of the General Assembly by December 1, 2009.

Current Law:

Procurement Law: The State's primary procurement units may sponsor or participate in cooperative purchasing agreements if the unit head finds in writing that the agreement provides cost or administrative benefits to the State or promotes intergovernmental cooperation, and that it is not intended to evade State procurement law. Primary procurement units are the:

- Treasurer's Office;
- Department of Budget and Management;
- Department of General Services;
- Maryland Department of Transportation;
- Maryland Port Commission;
- Department of Public Safety and Correctional Services; and
- Morgan State University.

State MBE Program: The State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contract be awarded to MBEs, including 7% to African American-owned businesses and 10% to woman-owned businesses. There are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurement. Local government entities are not subject to MBE program goals.

State SBR Program: Chapter 75 of 2004 established SBR and defined a small business as either a minority-owned business that meets the criteria specified below, or a business other than a broker that is independently owned and operated; not a subsidiary of another firm; and not dominant in its field of operation. DGS is responsible for certifying small businesses.

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. Under regulations adopted by DGS, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecast spending to contracts for small businesses serving as prime contractors. Local government entities are not subject to SBR goals.

SBR terminates September 30, 2010.

State Fiscal Effect: The bill's exemptions are broad and can be interpreted to exempt any contract for which intergovernmental participation and cooperation is inefficient or overly burdensome for the procurement unit to administer (*i.e.*, not in the unit's best interest). Therefore, to the extent that State procurement units facilitate intergovernmental participation only when it is not overly burdensome to do so, Legislative Services believes that the efficiency of State and local procurement is not significantly negatively affected, and may be positively affected if greater volume reduces the per-unit price of goods and services. By implication, procurement units do not require additional staff to administer cooperative purchasing agreements if they are not burdensome to administer.

DGS, DBM, MDOT, and DoIT can establish and maintain the required lists on a web site with existing resources. GOMA is already required, under State regulations, to compile annually a list of State procurements expected to have a value of at least \$100,000. Those same regulations also authorize GOMA to publish the list on eMaryland Marketplace, the State's procurement web portal, with the approval of the Joint Committee on Administrative, Executive, and Legislative Review. Therefore, the list can be posted on an existing State web server and updated annually with existing resources.

The Board of Public Works can satisfy the reporting requirement with existing resources.

Local Fiscal Effect: Local governments may benefit by gaining access to State or other local supply and service contracts that offer economies of scale with respect to price and quantity.

At the same time, some local procurements may encounter decreased participation by local vendors that do not have a statewide distribution network or cannot respond to high-volume orders. These vendors may not bid on local contracts that could be open to other entities across the State, thereby reducing competition. In these cases, however, the local entity may determine that facilitating intergovernmental participation is not in its best interest, thereby eliminating the concern for small local vendors.

Small Business Effect: As noted above, the increased use of cooperative purchasing agreements may increase business opportunities for small businesses with capacity or may diminish participation in State and local procurement by small vendors that do not have statewide distribution networks or the ability to respond to high-volume orders.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Somerset counties; City of Bowie; Board of Public Works; Maryland State Department of Education; Department of General Services; Department of Health and Mental Hygiene; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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