

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1557

(Chair, Health and Government Operations Committee
and Chair, Ways and Means Committee)

Health and Government Operations and Education, Health, and Environmental Affairs
Ways and Means

State Lottery - Procurement - Licensing Agreements and Prizes

This bill exempts from most State procurement law any procurement by the State Lottery Agency for the use of intellectual property that will be used with lottery products as well as any procurement in support of enterprise activities for the purpose of State Lottery prizes. The bill also requires the Director of the State Lottery Agency to enter into a licensing agreement for the use of intellectual property that will be used with lottery products and to contract for any item or service that will be used as a lottery prize for any online or instant ticket lottery product.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: State Lottery Agency procurement contract expenditures may increase due to limited competition. The potential special fund expenditure increase may be offset by increased lottery sales revenue. Lottery revenues in excess of expenditures accrue to the general fund.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: State procurement law requires open and competitive procurements, with contract awards going to the responsible bidder with the lowest responsive bid. A responsible bidder is one who has the capability in all respects to perform fully the requirements for a procurement contract and possesses the integrity and reliability that will ensure good faith performance. A responsive bid must conform in all material respects to the invitation for bids issued by the procurement unit.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. 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 Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Maryland Stadium Authority;
- State Lottery Agency; and
- State Retirement and Pension System.

Procurement in support of enterprise activities for the purpose of direct resale or remanufacture and subsequent resale is also exempted.

The State Lottery Agency is exempt from most State procurement law for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

- provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;
- does not involve the advertising or other promotion of alcohol or tobacco products; and
- is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee.

The Director of the State Lottery Agency must, with the approval of the State Lottery Commission, contract for the promotion of the State lottery and enter into private sector cooperative marketing project agreements in accordance with relevant State procurement law.

Sole Source Procurement

Whenever a procurement officer determines that there is only one available source for the subject of a procurement contract, the procurement officer may award the procurement contract without competition to that source. Before awarding a procurement contract to a sole source, the procurement officer must obtain the approval of the head of the unit and any other approval required by law. Generally approval from the Department of Budget and Management is required for sole source procurement, but for sole source procurement of specified representation requiring confidentiality (*i.e.*, threatened or pending litigation, appraisal of real property for acquisition by the State, or collective bargaining) approval by the Attorney General alone may be required. Within 30 days after the execution and approval of a sole source procurement contract, the unit must publish in eMaryland Marketplace notice of the award.

Background: In fiscal 2008, the State Lottery Agency spent \$43.3 million on contractual services, or 74% of its total budget. State Lottery revenues are special funds in the State budget. Lottery revenues that exceed expenditures are credited to the general fund.

The State Lottery advises that licensed (or intellectual) properties constitute a considerable portion of its product mix and the agency contends that the bill will enable it to react more quickly to market trends. Well-known brand names (a recent example being Hershey's Kisses™) are sometimes featured on State Lottery tickets and items associated with licensed properties (*e.g.*, a year's supply of Hershey's® chocolate) are often offered as second chance prizes, an inducement to increase sales of existing tickets.

State Fiscal Effect: The State Lottery Agency advises it will not require additional personnel or other resources to carry out procurements under the bill. However,

Legislative Services advises that lottery procurement contract costs may increase special fund expenditures due to limited competition. This may be offset by increased sales revenues to the extent the bill facilitates entering into contracts that may increase sales, which may result in additional general fund revenues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Maryland State Lottery Agency, Department of Legislative Services

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