SB 171

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 171 (Senator Peters, *et al.*)

Education, Health, and Environmental Affairs Health and Government Operations

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Procurement - Veteran-Owned Small Business Enterprise Participation

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This bill establishes a procurement preference program in which, beginning July 1, 2012, each State agency tries to award 0.5% of the value of its procurement contracts to small businesses owned and operated by veterans.

Fiscal Summary

State Effect: State spending on procurements may increase beginning in FY 2013 to the extent the bill reduces competition among bidders. Any increase cannot be reliably estimated at this time. General fund expenditures by the Department of Information Technology (DoIT) and Transportation Trust Fund expenditures by the Maryland Department of Transportation (MDOT) each increase by $100,000 on a one-time basis in FY 2012 to upgrade financial and procurement management systems. Potential minimal increase in general fund revenues and expenditures beginning in FY 2013 due to the bill's penalty provisions.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	$0	$0	-	-	-
GF Expenditure	$0	$100,000	-	-	-
SF Expenditure	$0	$100,000	-	-	-
FF Expenditure	$0	$0	-	-	-
Net Effect	$0	($200,000)	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful. The bill facilitates the participation of veteran-owned small businesses in State procurement.

Analysis

Bill Summary: The bill applies to businesses verified as veteran-owned small businesses by the U.S. Department of Veterans Affairs (DVA) Center for Veterans Enterprise (CVE).

Under the program, agencies have to establish an expected degree of veteran-owned small business participation for each procurement, based on the potential subcontracting opportunities and the availability of veteran-owned small businesses to respond competitively to the solicitation. Procurement awards must be made to responsive bidders that meet or make a good faith effort to meet the established contract goal. The bill does not apply if its requirements are in conflict with an applicable federal program.

The Board of Public Works (BPW) must adopt regulations to implement the program, establish procedures for tracking and reporting on program participation, and report annually to the Legislative Policy Committee on program participation and effectiveness.

The bill includes civil and criminal penalties, including fines and/or imprisonment, for fraudulent claims related to certification as a veteran-owned small business enterprise or participation in the procurement process. It establishes procedures for reporting possible violations to the Office of the Attorney General for prosecution. Any person who violates the program's requirements must pay all plaintiff costs and attorney's fees and is barred from future State contracts until all penalties are satisfied.

Current Law: State procurement law includes several separate preference programs, including one for veteran- and service-disabled veteran-owned businesses. Chapter 695 of 2008 added a 2% price preference for veteran-owned small businesses and a 3% price preference for service-disabled veteran-owned small businesses to the existing 5% price preference for all small businesses under the State's Small Business Preference Program (SBP). SBP applies to procurement of supplies, services, and construction-related services by the Department of General Services (DGS), MDOT, University System of Maryland (USM), Morgan State University, and the Department of Public Safety and Correctional Services (for the construction of correctional facilities only).

The minority business enterprise (MBE) program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts 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. The MBE program is scheduled to terminate July 1, 2011.

Chapter 75 of 2004 established the Small Business Reserve Program, which requires all 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. The program is scheduled to terminate September 30, 2010.

MDOT certifies MBEs for the entire State, and DGS certifies small business enterprises.

USM, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in-whole or in-part from most State procurement law, and thus would not be subject to veteran-owned small business enterprise preference for some or all of their procurements:

- 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: The VetBiz.gov registry maintained by CVE lists 225 verified veteran-owned small businesses in Maryland that are eligible to participate in the preference program established by this bill.

State Fiscal Effect: Total procurement spending could increase slightly beginning in fiscal 2013 to the extent that the bill reduces the competitiveness of State procurements. The bill requires that agencies set a goal of awarding procurement contracts with a value of 0.5% of total procurements to veteran-owned small businesses so there is no direct increase in procurement spending. However, to the extent that the bill imposes additional burdens on bidders and offerors to make good faith efforts to include such businesses as subcontractors, it could diminish the competitiveness of State procurements by reducing the number of firms willing or able to bid on State contracts. The effect of reduced competition on procurement spending cannot be estimated reliably.

Verification of veteran-owned small businesses is handled by CVE, so there is no cost associated with certification at the State level. Verified firms will need to provide evidence of their status during the procurement process; confirmation of that status can be performed by procurement officers as part of the normal contract award process. To the extent that certification confirmation adds a layer of review to that process, some contract awards may be delayed.

MDOT and DoIT incur additional expenditures in fiscal 2012 to update and adapt the State's financial management and procurement systems. The preference program established by the bill is structured similarly to the MBE program, requiring agencies to set specific goals for each procurement and report on their success in reaching the statutory goal to BPW. Each of those features is tracked within the State's financial and procurement management systems. To provide the same capability with respect to the new preference, both systems will need to be adapted to allow procurement officers to enter and report the relevant data for each procurement. DoIT's financial and procurement management systems serve most State agencies, except MDOT and higher education institutions (which are not affected by the bill). Legislative Services estimates the cost of updating both systems to be approximately $100,000 each. Other tasks, including training for procurement officers and outreach to veteran-owned small businesses, can be conducted with existing budgeted resources.

General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in District Court. General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this crime is expected to be minimal. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced in a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Fiscal Effect: Revenues increase minimally beginning in fiscal 2013 as a result of the bill's monetary penalty provisions from cases heard in circuit courts. Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from $57 to $157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: HB 559 of 2009, a similar bill, was withdrawn after its hearing in the House Health and Government Operations Committee. Its cross file, SB 656, passed the Senate with amendments and received a hearing from the House Health and Government Operations Committee, but no further action was taken.

Cross File: HB 359 (Delegate James, *et al.*) - Health and Government Operations.

Information Source(s): Department of Business and Economic Development, Board of Public Works, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, University System of Maryland, U.S. Department of Veterans Affairs, Disabled Veterans Business Enterprise Alliance, Department of Legislative Services

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