

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 791

(Senator Garagiola)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement - Multi-Year Contracts for Renewable Energy - Termination
Clauses

This bill authorizes the Board of Public Works (BPW), on the recommendation of the Secretary of General Services, to waive the requirement for a mandatory termination clause for a multi-year State contract to procure Tier 1 or Tier 2 renewable energy for the State. In determining whether to grant a waiver, BPW must consider the effects of its decision on the ability of the energy vendor to obtain financing for the renewable energy generation project.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: In general, State procurement contracts are subject to annual appropriations. Contracts that span multiple years must include clauses allowing for the termination of the contract in the event that funds are not appropriated to pay for the contract in a given year. The clause must discharge both parties from future performance but not from existing obligations. Under these circumstances, the contract terminates either on the last day of the fiscal year for which money is appropriated or the date provided in the contract's termination clause, whichever is earlier. Units that terminate multi-year contracts under these conditions must reimburse the contractor for the

reasonable value of any nonrecurring costs that were not amortized in the price of supplies or services delivered under the contract.

Prior to final approval, multi-year contracts must be reviewed by BPW and by the primary procurement unit responsible for that type of procurement. They may be approved only if each reviewing agency determines that the State's requirements cover the period of the multi-year contract, are reasonably firm, and are continuing. Moreover, the agencies must determine that the multi-year contract serves the State's best interests by encouraging effective competition.

Tier 1 renewable energy is defined in statute as energy generated from the following sources:

- solar;
- wind;
- qualifying biomass;
- methane from decomposition of organic materials;
- geothermal;
- ocean;
- specified fuel cells; or
- small hydroelectric plants.

Tier 2 renewal energy comes from:

- hydroelectric power plants other than pump storage generation;
- incineration of poultry litter; and
- waste-to-energy.

Background: The Department of General Services (DGS) procures energy on behalf of all State agencies, including those that control most other types of their own procurements, including the Maryland Department of Transportation and the University System of Maryland. On March 10, 2010, DGS will seek BPW approval for the first State contract for renewable energy. The contract is to install and maintain solar panels on five State buildings operated by DGS and spans 20 years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of General Services, Public Service Commission, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2010
mlm/rhh

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