

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 764
Appropriations

(Delegate Guzzone, *et al.*)

Higher Education - Use of State Employees Instead of Service Contracts

This bill makes the University System of Maryland (USM) and its constituent institutions, Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) subject to current State procurement requirements governing service contracts for State-operated facilities that have an annual cost of at least \$100,000.

Fiscal Summary

State Effect: To the extent that the affected institutions award nonexempt service contracts, they may experience increased costs for procuring those contracts. However, all nonhigher education State service contracts awarded in the past 10 years have been exempt, so the potential for a fiscal effect is negligible.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: It is the policy of the State to use State employees to perform all State functions in State-operated facilities instead of contracting with a private-sector entity to perform those functions. Service contracts procured by State procurement units that have an annual cost of at least \$100,000 are exempt from the explicit preference to use State employees when:

- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;

- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property;
- a clear need exists to obtain an unbiased finding or opinion; or
- the General Assembly authorizes or requires that certain services be performed by an independent contractor.

The Department of Budget and Management (DBM) is the procurement control unit for State service contracts. If a contract is not exempt under any of the specific exemptions in the law, DBM may certify the contract as exempt only if the unit has provided DBM with an analysis of the cost of the contract that shows that it will save the State at least \$200,000 or 20% of the value of the contract, whichever is less, over the life of the contract. DBM must also deem that the contract includes adequate control mechanisms, complies with all State procurement laws, and does not adversely affect affirmative action efforts.

USM, MSU, and SMCM are exempt from most provisions of State procurement law. However, service contracts by USM, MSU, and SMCM with a value that exceeds \$500,000 require approval from the Board of Public Works. The procurements by these entities that are exempt from procurement law must nonetheless be made under procedures that promote the purposes underlying State procurement law.

Procurement units seeking DBM certification of nonexempt service contracts must develop assistance plans for State employees adversely affected by the contract. They must also provide prior notification of the adverse impact to the employees either on the day the contract is signed or six months before the adverse impact occurs, whichever is earlier. Because they operate independent personnel management systems and are exempt from State personnel rules, USM, MSU, and SMCM are also exempt from these requirements and procedures. However, this bill makes them subject to the same requirements as other State agencies. BCCC is part of the State's Personnel Management System and therefore is already subject to the requirements.

Background: DBM is not aware of any nonexempt State service contracts awarded in the last 10 years.

Additional Comments: To the extent that any of the institutions affected by the bill have a nonexempt contract, current law requires that, prior to certifying a nonexempt contract, DBM confirm that the contract complies with State procurement law. However, the affected institutions are all exempt from most aspects of State procurement law and remain so under the bill, so compliance may be problematic.

Additional Information

Prior Introductions: None.

Cross File: SB 401 (Senator King, *et al.*) - Education, Health, and Environmental Affairs.

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

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mc/rhh

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