Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 992 (Delegate Morhaim)
Health and Government Operations

Intergovernmental Cooperative Purchasing Agreement Requirements - Authority to Withhold Funds to Local Entities

This bill requires a State or local entity about to initiate a procurement for supplies or services to make a reasonable effort to determine if another State or local entity is participating in a contract for the same supply or service. It also authorizes the State Superintendent of Schools, Secretary of Health and Mental Hygiene, and Secretary of Transportation to withhold a portion of certain grants made to local governments if the local governments do not participate in at least one intergovernmental cooperative purchasing agreement (CPA).

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Likely increase in the administrative and operational burden imposed on State procurement units to comply with the bill's requirement to identify existing CPAs prior to initiating a procurement for supplies or services. This has no direct effect on State procurement costs, but it could delay the execution of State contracts and disrupt State operations. The Maryland State Department of Education (MSDE), Maryland Department of Transportation (MDOT), and Department of Health and Mental Hygiene (DHMH) can carry out the bill's requirements with existing budgeted resources. No effect on revenues.

Local Effect: Likely increase in the administrative and operational burden imposed on local procurement, as with the State. Local governments that do not participate in at least one CPA risk the loss of State aid. Available data suggest most local governments comply with that requirement, but some may not. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The affected State grant programs include:

- the per-pupil foundation grants provided to county school boards ($6,694 per student in fiscal 2012);
- the county-State minimum library grant program (for which the State pays approximately $14.00 per county resident in fiscal 2012 through 2016; the State also pays $6.75 per resident of each region for resource centers);
- local health program grants (which total $37.3 million in fiscal 2012); and
- highway user revenues (totaling approximately $146.9 million in fiscal 2012).

In fiscal 2014, the agency heads may withhold up to 0.5% of a grant to a local entity unless the local entity:

- reports that it has entered into or actively participates in at least one intergovernmental CPA;
- submits a plan for implementing an intergovernmental CPA; or
- demonstrates that its procurement occurs through another governmental entity that complies with either of the first two requirements.

In fiscal 2015, the agency heads may withhold up to 0.5% of a grant to a local entity unless it:

- actively participates in at least one intergovernmental CPA; or
- demonstrates that its procurement occurs through another governmental entity that actively participates in at least one intergovernmental CPA.

In fiscal 2016 and each year thereafter, the agency heads may withhold up to 1% of a grant to a local entity unless it:

- actively participates in at least one intergovernmental CPA; or
- demonstrates that its procurement occurs through another governmental entity that actively participates in at least one intergovernmental CPA.

Current Law: Chapter 680 of 1997 first authorized State participation in intergovernmental CPAs. The State's primary procurement units may either originate a CPA in conjunction with other governmental entities or participate in a contract awarded by another governmental entity (usually referred to as piggyback agreements). Primary procurement units are the:

- Treasurer's Office;
- Department of Budget and Management;
- Department of General Services (DGS);
- Department of Public Safety and Correctional Services;
- Department of Information Technology (DoIT);
- MDOT (and Maryland Transportation Authority);
- Maryland Port Commission;
- Morgan State University;
- St. Mary's College of Maryland; and
- University System of Maryland.

Chapter 677 of 2009 required each State or local procurement contract for supplies or services to 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; nonprofit organizations may also participate in the agreements.

Contracts for capital construction and improvements or other unique purchases and procurements valued at less than $100,000 are exempt from the requirement. The requirement 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 program, the Small Business Reserve 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 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.

Background: The purpose of intergovernmental CPAs is to pool the purchasing power of multiple governmental entities to obtain better pricing and to reduce administrative costs associated with individual procurements.

Chapter 677 required the Board of Public Work's (BPW) 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 (eMM) to the General Assembly by December 1, 2009. The report identified several impediments to the use of CPAs, including annual membership fees required by some cooperatives, the lack of access to available cooperative arrangements in the rural areas of the State, and the absence of a directory of CPAs available for use by State and local procurement units. Among other recommendations, the report recommended the establishment of a website that includes CPAs available for use by State and local procurement units.

State procurement units that enter into or piggyback onto a CPA must post notice to that effect on eMM, the State's online procurement portal. However, individual purchases made through a CPA are not required to be posted on eMM. The requirement to post all State CPAs on eMM makes it a potential source of information on existing CPAs, but the eMM search function does not distinguish between CPAs and traditional procurements, so its functionality in that regard is currently limited. eMM is currently being redesigned, but it is not clear whether that aspect of its functionality is being addressed.

There are several other sources of information on existing CPAs: both DGS and DoIT post on their respective websites the blanket purchase orders available to all State and local purchasers in the State. In addition, the Baltimore Regional Cooperative Purchasing Committee includes a list of CPAs to which its members belong. However, none of these listings is comprehensive with regard to available CPAs in the State; BPW's recommendation to establish a single website has not been implemented.

State Fiscal Effect: The bill's requirement that State procurement units make a reasonable effort to identify existing relevant CPAs prior to initiating a procurement poses administrative and operational burdens on procurement units that may affect the timeliness of those procurements. In the absence of a single reliable source of information on existing CPAs, that effort adds to the time necessary to carry out a procurement. Moreover, with hundreds of procurements initiated by the State each year, the process of searching for existing CPAs for each one may cause delays.

MSDE, MDOT, and DHMH are each required to receive annual notifications from the 24 counties (including Baltimore City) regarding their use of CPAs and to make a determination based on those notifications whether to withhold funds from the four affected programs. Legislative Services determines that they can carry out those functions with existing budgeted resources.

Local Fiscal Effect: Local governments experience the same administrative and operational burdens as the State with regard to the requirement to identify existing CPAs. In addition, local governments that do not participate in CPAs risk losing a portion of their State grants for education, libraries, transportation, and health care. Most local jurisdictions responding to requests for information for this fiscal and policy note indicate that they already participate in at least one CPA and therefore do not anticipate that any of their funds will be withheld.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; City of Bowie; Board of Public Works; Department of Budget and Management; 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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