

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1205 (Delegate Hucker, *et al.*)
Health and Government Operations

Procurement - Service Contracts - Delineation of Costs by Categories

This bill requires the Board of Public Works (BPW), in consultation with the Department of General Services (DGS), to adopt regulations that require bidders or offerors on *all* service contracts, including janitorial service contracts, to delineate their costs by (1) labor; (2) cleaning supplies; and (3) projected man-hours to satisfactorily complete the service. The bill repeals the current exemption (for janitorial service contracts) applicable to contracts awarded to Maryland Correctional Enterprises (MCE), Blind Industries and Services of Maryland (BISM), the Employment Works program, or a business owned by an individual with a disability.

Fiscal Summary

State Effect: BPW, DGS, and MCE can carry out the bill's requirements with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Chapter 339 of 2011 required BPW, in consultation with DGS, to adopt regulations requiring bidders or offerors on service contracts for janitorial services to delineate their costs by (1) labor; (2) cleaning supplies; and (3) projected man-hours to satisfactorily complete the service. Janitorial service contracts awarded to (1) MCE; (2) BISM; (3) the Employment Works Program; or (4) a business owned by an individual with a disability were specifically exempt from the requirements.

Under State procurement law, State agencies and State-aided or -controlled entities must procure services and supplies from MCE, BISM, the Employment Works Program, or a business owned by an individual with a disability, in that order of preference. Only if none of those entities produces or provides the desired supplies or services may a State agency issue a competitive procurement.

With the exception of capital expenditures by the Maryland Department of Transportation and the Maryland Transportation Authority related to State bridges, roads, and highways, BPW controls procurement by all State agencies. Under that authority, BPW may set policy, adopt regulations, and establish internal operational procedures consistent with State procurement law. BPW is authorized to delegate its authority to other State entities, and it has delegated primary authority for the procurement of service contracts related to the maintenance of State facilities to DGS.

The University System of Maryland, 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. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill's requirements.

- BISM;
- 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;
- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;
- State Retirement and Pension System;
- College Savings Plan of Maryland; and
- Chesapeake Bay Trust.

Legislative Services notes that, while it appears to be the bill's intention to include BISM in its requirements, this existing provision makes BISM exempt.

Procurements by these entities that are exempt from procurement law must nonetheless be made under procedures that promote the purposes underlying State procurement law.

A service contract is defined as a procurement contract for services (1) provided to an Executive Branch agency; (2) performed in a State-operated facility; and (3) exceeding an annual cost of \$100,000. Bids for service contracts are required only to provide a total cost for the requested service or a per-unit cost if the total amount of work is open-ended in the solicitation.

Background: MCE is the prison industry component of the State Division of Correction. MCE is solely supported with special funds, maintaining a self-supporting status by providing an array of services and manufacturing a variety of products through the use of inmate labor. MCE's customer base includes the State, local governments, and nonprofit organizations.

BISM was established in 1908 as a nonprofit organization with a stated purpose of positively changing people's attitudes about blindness. BISM maintains 11 facilities, 4 of which are in Maryland, that employ 400 associates to manufacture and provide a wide array of products and services. Its clients include the federal government, state governments, and commercial customers.

The Secretary of General Services must designate Maryland Works, Inc., or another appropriate entity, to facilitate the distribution of procurement contracts to community service providers that participate in Employment Works. Maryland Works is a statewide membership association of at least 19 community service organizations that specialize in creating employment opportunities for individuals with disabilities. It serves over 17,000 Marylanders with disabilities, more than 11,000 of whom are in employment settings. As the manager of the State's current purchasing preference program for sheltered workshops, it administers \$41 million in State contracts for supplies and services.

Additional Comments: Legislative Services notes that the categories included in the bill do not apply to all types of service contracts. The inclusion of costs for cleaning supplies, in particular, appears to be inadvertent.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): 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

Fiscal Note History: First Reader - March 6, 2012
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