

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1196

(Delegates Ready and Pena-Melnyk)

Health and Government Operations

Education, Health, and Environmental Affairs

Participation in Procurement - Conflict of Interest - Exemption

This bill alters the conflict of interest provision for participation in procurement. It specifies that oral comments on a specification or solicitation for a bid or proposal that are provided from two or more persons in response to a request by an Executive Branch procurement unit do not constitute assisting the unit in drafting a procurement. It also allows a person who provides comments in response to a request by a procurement unit for information from two or more persons related to a procurement for health, human, social, or educational services to submit a proposal for the procurement. A procurement unit that receives comments in response to its request for information must retain any written comments and a record of any oral comments it receives.

Fiscal Summary

State Effect: None. The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: In general, State ethics requirements prohibit a person who assists an Executive Branch procurement unit in drafting specifications for a procurement from either submitting a bid or proposal for the procurement or assisting another person, directly or indirectly, who is submitting a bid or proposal for the procurement. Persons who provide assistance for sole source or unsolicited procurements, or who assist in the

development of architectural and engineering service procurements under specified conditions, are exempt from the ethics requirements until September 30, 2013.

Background: Chapters 438 and 439 of 2008 established the Task Force to Study the Procurement of Health and Social Services by State Agencies to:

- evaluate and make recommendations regarding the methods used by State agencies to procure the delivery of health and social services;
- examine and make recommendations regarding State agencies' timeliness in preparing and issuing specified reports and in making payments to contractors;
- examine and make recommendations regarding possible standardization of contracting processes; and
- identify and make recommendations regarding other issues affecting the efficiency and cost of procuring health and social services.

A preliminary report from the task force was due by November 30, 2008, but no members of the task force had been appointed by that time. Chapter 683 of 2010 changed the task force's membership, expanded its scope to include procurement of education services, extended its authorization until June 30, 2012, and required a final report by November 30, 2011.

The final report noted that "human services especially are subject to ever-changing federal and State laws which impact how providers deliver services. There is not always effective communication among the procurement office, programs, and the legal office to develop a concise scope of work." Therefore, among the task force's 36 recommendations was a recommendation to "[a]llow more flexibility in obtaining provider input when drafting specifications for procurements." Other recommendations are related to streamlining and standardizing State procurement processes, making State payments to providers in a more timely fashion, and enhancing the use of technology in the procurement and contract monitoring processes.

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

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