

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1286 (Delegate Tarrant, *et al.*)  
Health and Government Operations

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Procurement - Noncompetitive Negotiation - Repeal of Limitations

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This bill expands the authority of State procurement units to procure services using noncompetitive negotiations to include health services. It also repeals restrictions on the use of noncompetitive negotiations, including existing requirements that (1) the services be for individuals with disabilities or who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, displaced, or minors; (2) the procurement is for a class of services for which the Department of Budget and Management (DBM) has approved the use of noncompetitive negotiations; and (3) a determination by the procurement officer that conditions warrant the use of noncompetitive negotiation must be approved by the head of the procurement unit.

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Fiscal Summary

**State Effect:** Significant increase in State procurement costs (all funds) to the extent that the bill reduces competition for State contracts for health, human, social, and educational services. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful for small businesses that provide health, human, social, or educational services.

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Analysis

**Current Law:** The preferred method for procuring human, social, cultural, or educational services is competitive sealed proposals. However, a procurement officer may use noncompetitive negotiation to award a procurement for human, social, or

educational services that are to be provided to individuals with disabilities or who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, displaced, or minors. The procurement must be for a class of services for which DBM has approved the use of noncompetitive negotiation. In addition, the procurement officer must determine, with the approval of the head of the unit, that at least two sources are available for the services, but that the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.

A procurement using noncompetitive negotiation begins with a request for a general expression of interest that must meet all public disclosure requirements required of invitations to bid. Without further disclosure, the procurement unit may then enter into negotiations with any responsible service provider who submits an expression of interest. In awarding a contract, the head of the unit must determine that, on the basis of continuing discussions or past program experience, the award is in the best interest of the State.

**Background:** DBM controls the procurement of services for most Executive Branch agencies. DBM advises that, since fiscal 2009, only the Department of Human Resources and the Department of Juvenile Services have awarded contracts using noncompetitive negotiation. **Exhibit 1** shows the combined total number of contracts awarded by the two agencies using noncompetitive negotiations for the past three fiscal years. As the exhibit shows, noncompetitive negotiations made up 19.2% of total procurement for human, social, cultural, and educational services in fiscal 2010, and 40.1% in fiscal 2009.

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**Exhibit 1**  
**Contract Awards Using Noncompetitive Negotiation**  
**(\$ in Millions)**

| <u>Fiscal Year</u> | <u># of Contracts</u> | <u>Contract Value</u> | <u>Total HSCE Procurement</u> | <u>% of Total</u> |
|--------------------|-----------------------|-----------------------|-------------------------------|-------------------|
| 2009               | 68                    | \$446.0               | \$1,098.0                     | 40.6%             |
| 2010               | 3                     | 229.0                 | 1,193.6                       | 19.2%             |
| 2011               | 103                   | 551.0                 | NA                            | NA                |

HSCE: human, social, cultural, and educational services

Source: Department of Budget and Management; Governor’s Office of Minority Affairs

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**State Fiscal Effect:** A fundamental purpose of State procurement law, which is incorporated in statute, is “fostering effective broad-based competition in the State through support of the free enterprise system.” By effectively expanding the use of

noncompetitive negotiation to the procurement of potentially all contracts for health, human, social, and educational services, it minimizes the use of competition, through competitive sealed proposals, to keep procurement costs down. This would also allow the State to use noncompetitive negotiation for the procurement of contracts for medical benefits for State employees and prison inmates, which are multi-million dollar contracts. Legislative Services cannot reliably estimate the fiscal effect of this change, but given the large volume and value of affected contracts, it may be significant.

**Small Business Effect:** Small businesses that provide health, human, social, or educational services may experience expedited and noncompetitive procurement processes for State contracts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Board of Public Works, Department of Budget and Management, Maryland State Department of Education, Department of General Services, Governor's Office of Minority Affairs, Department of Health and Mental Hygiene, Department of Juvenile Services, University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - March 20, 2012  
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