

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 559 (Delegate Clagett, *et al.*)
Health and Government Operations

Procurement - Automatic Debarment - Unpaid Taxes

This bill specifies that any person who owes unpaid taxes to the State is debarred by operation of law from entering into a contract with the State. The debarment is lifted automatically if the person pays the taxes owed to the State. A person who is debarred for unpaid State taxes must be notified of the debarment and be given the opportunity for a hearing on whether the basis for debarment exists. A bidder or offeror for a State contract must attest that, to the best of its knowledge, no officer, director, partner, or employee owes unpaid taxes to the State.

Fiscal Summary

State Effect: None. Any increase in debarment proceedings by the Board of Public Works (BPW) and the Office of the Attorney General (OAG) can be handled with existing budgeted resources. Procurement units can develop and process the necessary affidavits with existing resources.

Local Effect: None. The bill applies only to debarments from State procurement.

Small Business Effect: Potential meaningful for small businesses with unpaid State taxes that are on a payment plan with the Comptroller's Office.

Analysis

Current Law: A person is subject to automatic debarment from procurement with any public body in the State if the person has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe committed in the furtherance of obtaining a contract with a public body. In all other cases, generally involving criminal

convictions, failing to perform according to contract provisions, or having been debarred by the federal government, debarment from entering into procurement contracts with the State is subject to the determination of BPW, based on evidence provided by OAG following an investigation. Except for automatic debarments described above, a person has a right to a hearing before BPW prior to being debarred. A person who is automatically debarred also has an opportunity for a hearing on whether the basis for debarment exists, but only after being notified that automatic debarment has been instituted.

A debarment imposed due to a criminal conviction terminates if the conviction that is the basis for the debarment is reversed or overturned on appeal. A debarred person may petition to BPW for termination of the debarment after five years have passed or, if the debarment is for a specified period of time, after half of the debarment period has passed.

Background: Prior to awarding a contract for more than \$200,000, a State agency must contact the Compliance Department of the Comptroller's Office to obtain a tax clearance for the vendor. Under current rules, vendors with unpaid taxes that are on payment plans are still eligible for a tax clearance.

State payments to contractors are also reviewed by the Comptroller's Office to ensure that the contractor does not owe unpaid taxes to the State. If the contractor is found to owe taxes to the State, the amount of the unpaid taxes is withheld from the payment.

Small Business Effect: Small businesses with unpaid State taxes that are currently on a payment plan with the Comptroller's Office are no longer eligible to participate in State procurement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Board of Public Works; Comptroller's Office; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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