

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 14

(Chair, Health and Government Operations
Committee)(By Request - Departmental - General
Services) (By Request - Departmental - Minority Affairs,
Office of)

Health and Government Operations

Education, Health, and Environmental Affairs

**Small Business Reserve Program - Procurements by Designated Procurement
Units**

This departmental bill clarifies the definition of “small business” and requires that a procurement with an expected value between \$15,000 and \$100,000 be designated for the Small Business Reserve (SBR) program (subject to specified exemptions), if the procurement is being conducted by a State agency that is required to participate in SBR. A qualifying procurement may be exempted from this requirement if the procurement officer, with the approval of the agency head or designee, determines that the procurement should not be designated for SBR. The bill also establishes legislative intent that SBR not displace or disrupt important service relationships between nonprofit organizations and State agencies, and it requires a related report.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Potential increase in State procurement costs (all funds) to the extent that limiting competition for contract awards for affected contracts only to small businesses increases the cost of those contracts. Any increase may be restricted to the extent that many of the contracts affected by the bill are already bid under SBR. The exemptions allowed by the bill may further restrict its effect, although all procurements of the specified value remain eligible for SBR. SBR terminates during FY 2017, so any fiscal effect ends that year. The council and the Department of General Services (DGS) can complete the mandated study with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: The Governor’s Office of Minority Affairs (GOMA) and the Department of General Services (DGS) have determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill clarifies that in order to meet statutory criteria as a “small business,” a firm’s *average annual employment* over the past three fiscal years may not exceed the specified statutory limits for each business category.

The bill’s requirement that procurements of a specific value be included in SBR does not apply to (1) procurements of human, social, cultural, or educational services; (2) sole source procurements; (3) emergency procurements; (4) intergovernmental cooperative purchasing agreements; and (5) procurements of legal services provided for children and indigent adults in need of assistance, adult guardianship, child adoption, and guardianship. It also does not apply to procurements by State entities exempt from State procurement law that are identified as sole source, emergency, or intergovernmental cooperative purchasing procurements. However, these procurements remain *eligible* for SBR.

The Council for the Procurement of Health, Educational, and Social Services and the Secretary of General Services or the Secretary’s designee must study and report on the bill’s current and potential impact on nonprofit entities that contract with State agencies. The study must consider the State’s policy interest in promoting participation by small businesses and the State’s policy interest in providing nonprofit corporations access to contracting opportunities that further their tax exempt missions. The study’s findings and recommendations must be reported to the Board of Public Works (BPW) and the General Assembly by July 1, 2015.

Current Law: Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business or a business other than a broker that is independently owned and operated, not a subsidiary of another firm, and not dominant in its field of operation. In addition, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did not employ more than 25 people in its retail operations; 50 people in either its wholesale or construction operations; or 100 people in either its service, manufacturing, or architectural and engineering operations; *or*

- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

The option to meet either of these criteria is in effect for the two-year period ending September 30, 2014. Thereafter, both criteria must be met.

DGS is responsible for certifying small businesses. Small businesses self-report their small business status, which DGS does not independently verify because it does not have sufficient staff resources to do so. The program's termination date has been extended twice since its inception, and it is currently scheduled to terminate on September 30, 2016.

SBR requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by DGS, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors.

The Council for the Procurement of Health, Educational, and Social Services was established by Chapters 212 and 213 of 2012 following the recommendations of the Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies. The purpose of the council is to advise BPW and monitor the implementation of recommendations made by the task force. Staffing for the council is provided by agencies represented on the council and by BPW, in accordance with the State budget. By December 31 of each year, the council must report to the General Assembly on its activities and recommendations.

Membership of the council consists of multiple agency heads within State government, a member of the House of Delegates, a member of the State Senate, and four representatives of private organizations with experience providing human services funded by the State. These four individuals are appointed by the Governor.

Background: Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR. Since its inception, the program has never achieved its target of 10% of procurement dollars being awarded to certified small businesses. **Exhibit 1** shows the program's results for the 23 agencies subject to SBR in fiscal 2012, the most recent data available. Based on these figures, 8 of the 23 agencies achieved the program's 10% target (three transportation-related agencies did not achieve the goal as one reporting entity). Procurement expenditures under SBR totaled \$218.6 million in

fiscal 2012, which is 6.15% of total State procurement expenditures. This represents a modest increase from 6.10% in fiscal 2011.

Exhibit 1
Percentage of Procurement Dollars Going to Certified Small Businesses
Fiscal 2012

<u>Agency</u>	<u>% of Procurement Dollars</u>
Environment	31.5
Stadium Authority	25.3
Housing and Community Development	21.0
General Services	16.9
State Police	12.9
Natural Resources	11.4
Business and Economic Development	10.2
Morgan State University	10.0
Education	8.9
Information Technology	8.8
Labor, Licensing, and Regulation	8.0
Transportation/Port Commission/Transportation Authority	7.4
Insurance Administration	7.3
University System of Maryland	7.1
Public Safety and Correctional Services	4.2
Juvenile Services	3.5
Health and Mental Hygiene	3.1
Retirement	2.9
Lottery	2.9
Human Resources	2.3
Treasurer's Office	1.2
Program Total	6.2

Source: Governor's Office of Minority Affairs

State Fiscal Effect: Currently, contracts affected by this bill (*i.e.*, those valued at between \$15,000 and \$100,000) must be advertised on eMaryland Marketplace and any vendor, large or small, can bid on those contracts. By designating those contracts only for SBR (subject to the discretion of procurement officers and agency heads), the bill limits competition for those contracts only to small businesses. Limiting competition for procurement contracts has been shown to increase contract costs over the long term.

The effect of limiting competition on procurement costs may be restricted to the extent that many of the procurements affected by this bill may already be reserved for SBR. GOMA advises that, in fiscal 2013, SBR agencies had more than 3,600 transactions

involving contracts valued at between \$15,000 and \$100,000, with a total value of \$123.2 million; this total does not include most of the University System of Maryland (only figures for the College Park campus are available). Since this total is substantially less than total expenditures under SBR, it is likely that a large number of these transactions were already included in SBR, resulting in very little increase in procurement costs. However, it also makes it less likely that the bill will have a substantial effect on SBR participation.

Small Business Effect: GOMA and DGS advise that the bill will increase the number and value of State contracts to small businesses such that the State will achieve its SBR goal of 10%. Based on current contracting levels, they estimate that this increase will result in an additional \$130 million being awarded to small businesses. Given the analysis above, the Department of Legislative Services is skeptical that the effect will be of that magnitude, since many of the contracts affected by the bill may already be bid under SBR. Nevertheless, the bill likely increases procurement contracting by small businesses, except in the areas that are exempt from the requirement that they be included in SBR. The bill's clarifying language may mean that more firms qualify as small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Governor's Office of Minority Affairs; Department of General Services; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2014
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Small Business Reserve Program – Procurements by Designated Procurement Units

BILL NUMBER: HB 14

PREPARED BY: Department of General Services and Governor's Office of Minority Affairs

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The designation of procurements between \$15,000 and \$100,000 for SBR designation should have the impact of increasing the present fiscal year (FY) 2012 statewide SBR utilization of 6.15% closer to the 10% mandate set for the SBR Program.

The FY 2012 Small Business Reserve Program Report issued by the Governor's Office of Minority Affairs shows that the 23 participating SBR agencies achieved 6.15% SBR utilization collectively for FY2012. During that same period, SBR participants were awarded \$218,575,802 – an 8.2% increase from the previous year's expenditures of \$201,946,954. Using FY2012 data as a guide, compliance with the SBR Program's 10% mandate could result in an additional \$130 million dollars being awarded to small businesses.