

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 129

(Delegate Morhaim, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

**Procurement - Veteran-Owned Small Business Enterprise Participation - Award
of Contracts**

This bill clarifies that agencies must award contracts with an expected goal for veteran-owned small business participation to a responsible bidder or offeror based on existing requirements in procurement law governing the award of contracts using competitive sealed bids or proposals in addition to whether they meet or make a good faith effort to meet the applicable goal.

Fiscal Summary

State Effect: None. The bill is technical and clarifying in nature and does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapters 507 and 508 of 2010 established the Veteran-Owned Small Business Enterprise (VSBE) program, with an effective date of July 1, 2012, and a goal of awarding at least 0.5% of total procurement spending to small businesses owned and operated by veterans. Eligible businesses must be verified as veteran-owned small businesses by the U.S. Department of Veterans Affairs' Center for Veterans Enterprise (CVE).

Under the program, agencies have to establish an expected degree of veteran-owned small business participation for each procurement, based on the potential subcontracting

opportunities and the availability of veteran-owned small businesses to respond competitively to the solicitation. Procurement awards must be made to responsible and responsive bidders or offerors that meet or make a good faith effort to meet the applicable goal established under the program. The program's provisions do not apply if its requirements are in conflict with an applicable federal program.

The Board of Public Works (BPW) is charged with adopting regulations to implement the program, establishing procedures for tracking and reporting on program participation, and reporting annually to the Legislative Policy Committee on program participation and effectiveness.

In general, procurements conducted by competitive sealed bids are awarded to the responsible bidder who submits a responsive bid that (1) has the lowest bid price; (2) has the lowest evaluated bid price; or (3) for specified revenue-producing procurements, is most favorable to the State. Procurements conducted by competitive sealed proposals are awarded to the responsible offeror who submits the proposal or best and final offer that is determined to be the most advantageous to the State.

Persons are subject to civil and criminal penalties, including fines and/or imprisonment, for fraudulent claims related to certification as a veteran-owned small business enterprise or participation in the procurement process. Chapters 507 and 508 established procedures for reporting alleged violations to the Office of the Attorney General for possible prosecution. Violators must pay all plaintiff costs and attorney's fees in a civil action and are barred from future State contracts until all penalties are satisfied.

Background: In fiscal 2013, the program's inaugural year, agencies fell short of the program's goal, awarding a total of 0.16% of the total dollar value of their procurements to verified veteran-owned small businesses; this amounted to a total of \$876,600. Of the 28 Executive Branch agencies covered by BPW's report, only 6 reported any awards to veteran-owned small businesses, and only BPW reached the 0.5% goal. Data for fiscal 2014 has not yet been compiled and reported.

The VetBiz.gov registry maintained by CVE lists 514 verified veteran-owned small businesses in Maryland that are eligible to participate in the program, more than double the number when the program was enacted in 2010.

Additional Information

Prior Introductions: None.

Cross File: SB 30 (Senator Peters) - Education, Health, and Environmental Affairs.

Information Source(s): Board of Public Works, Department of General Services, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2015
md/ljm Revised - House Third Reader - March 23, 2015

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