

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 837

(Delegate Haynes, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

State Finance and Procurement - Public Senior Higher Education Institutions -
Policies Concerning Procurement Contracts

This bill requires that the procurement policies adopted by the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) reflect provisions in State law related to the use of State employees rather than outside contractors to perform State functions in State-operated facilities.

Fiscal Summary

State Effect: None. The bill is procedural in nature and has no fiscal effect on the revenues and expenditures of USM, MSU, and SMCM.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, USM, MSU, and SMCM are exempt from most provisions of State procurement law. However, they are each required to develop procurement policies that are approved by the Board of Public Works (BPW) and the Joint Committee on Administrative, Executive, and Legislative Review of the Maryland General Assembly.

It is the policy of the State to use State employees to perform all State functions in State-operated facilities in preference to contracting with the private sector to perform

those functions. *This bill requires that procurement policies developed by USM, MSU, and SMCM promote the purpose of this policy.*

Service contracts with a value of at least \$100,000 are exempt from the statutory preference to use State employees when:

- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;
- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property;
- a clear need exists to obtain an unbiased finding or opinion; or
- the General Assembly authorizes or requires that certain services be performed by an independent contractor.

At least 60 days before issuing a solicitation for a nonexempt contract, procurement units must provide prior notification to the employees' exclusive representative of (1) work that is proposed for contracting; (2) contracting procedures, requirements, timetables, and employee rights related to the procurement of service contracts; and (3) a reasonable opportunity to meet and discuss alternatives to the proposed service contract. *This bill requires that, to the maximum extent practicable, the procurement policies adopted by USM, MSU, and SMCM be similar to these requirements. The policies must also be similar to State requirements for specified janitorial service contracts, which require bidders or offerors to delineate costs by category, including labor, cleaning supplies, and man-hours.*

Under State procurement law, BPW controls most State procurement in the Executive Branch but has delegated control of service contracts to the Department of Budget and Management (DBM) under authority given to it by statute. Currently, procurement units seeking DBM certification of nonexempt service contracts must (1) show that they have considered alternatives to the service contract; (2) demonstrate cost savings of at least \$200,000 or 20% of the value of the contract, whichever is less; and (3) develop assistance plans for State employees adversely affected by the contract. DBM does not review service contracts procured by the universities; so prior to fiscal 2016, they did not have to complete those steps for nonexempt service contracts. However, Chapter 403 of 2015 required that Executive Branch units with independent personnel management systems (which includes USM, MSU, and SMCM) adopt rules and regulations regarding nonexempt contracts similar to those for other Executive Branch agencies.

Services are defined as the labor, time, or effort of a contractor and any product or report necessarily associated with the rendering of a service. They include services provided by attorneys, accountants, physicians, consultants, and other professionals who are

independent contractors. Services do not include construction-related services, architectural services, engineering services, or energy performance contract services.

Additional Information

Prior Introductions: None.

Cross File: SB 342 (Senator Feldman, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Contract Appeals, University System of Maryland, Department of Budget and Management, Department of General Services, Board of Public Works, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2016
md/ljm

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510