

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 390 (The Speaker, *et al.*) (By Request - Administration)
Health and Government Operations Education, Health, and Environmental Affairs

Improving the State Procurement Oversight Structure

This Administration bill requires a reviewing authority on a contract claim to approve, disapprove, or modify the decision of a procurement officer within 180 days, or a longer mutually agreed upon period, after receipt of the claim; otherwise, a contract claim is deemed denied to allow an appeal to the Maryland State Board of Contract Appeals (MSBCA). It also requires the Maryland Department of Transportation (MDOT), in consultation with the Maryland-Delaware-District of Columbia Press Association, to study (1) the use and cost of placing public announcements of solicitations of interest for transportation architectural and engineering (A&E) services in the *Daily Record* and other print publications and (2) whether the Code of Maryland Regulations should be amended. MDOT must report its findings to specified committees of the General Assembly by December 1, 2017. The bill raises the threshold used to determine whether a State contractor must disclose specified information to the Secretary of State. Finally, it repeals an obsolete provision authorizing agencies to prequalify vendors.

Fiscal Summary

State Effect: The bill is largely procedural in nature and does not materially affect governmental finances. MDOT can conduct the required study with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Contract Claims: A reviewing authority, defined in current law as the head of a unit and the head of the principal department or other equivalent unit of which the unit is a part, has 180 days, or a longer period that is mutually agreed upon, after receiving a contract claim to approve, disapprove, or modify the decision of a procurement officer. The reviewing authority may still remand the proceeding with instructions to the procurement officer. However, a decision not to pay a contract claim is a final action for the purpose of appeal to MSBCA. The reviewing authority's failure to reach a decision within the time required may be deemed, at the option of the contractor, to be a decision not to pay the contract claim. For any decision pending review by a reviewing authority on the bill's effective date, the reviewing authority must complete the review or remand the proceeding to the procurement officer by April 1, 2018. The timeframe for action by the reviewing authority does not apply to bid protests.

Disclosure Threshold: If, during a calendar year, a business enters into contracts, leases, or other agreements with the State under which the business receives at least \$200,000, up from \$100,000, the business must file with the Secretary of State a list that contains the name and address of (1) any resident agent of the business; (2) each officer of the business; and (3) if known, each person who has beneficial ownership of the business. The list must be filed within 30 days of the date when the total value of contracts, leases, or other agreements entered into during the calendar year reaches \$200,000.

Current Law:

Bid Protests and Contract Claims: On receipt of a bid protest or contract claim from a contractor, a procurement officer (1) must review the substance of the protest or claim; (2) may request additional information; (3) may discuss with interested parties and, if appropriate, may conduct negotiations with the person initiating the protest or claim; and (4) must comply with any applicable regulations. Unless clearly inappropriate, the procurement officer must seek the advice of the Office of the Attorney General. The procurement officer must resolve the bid protest or contract claim by agreement of the parties, wholly or partly deny the protest or claim, or wholly or partly grant relief to the complainant. The procurement officer then sends the decision in writing to the reviewing authority, who must approve, disapprove, or modify the officer's decision; except for construction contracts, there is no deadline for completing the review. For construction contracts, the reviewing authority must give the contractor notice of a resolution to the claim within 180 days after receiving the contract claim, or within 90 days in specified circumstances. Instead, the reviewing authority may remand the proceeding with

instructions to the procurement officer. The action of the reviewing authority is the agency's final decision.

Disclosure Threshold: If, during a calendar year, a business enters into contracts, leases, or other agreements with the State under which the business receives at least \$100,000, the business must file with the Secretary of State a list that contains the name and address of (1) any resident agent of the business; (2) each officer of the business; and (3) if known, each person who has beneficial ownership of the business. The list must be filed within 30 days of the date when the total value of contracts, leases, or other agreements entered into during the calendar year reaches \$100,000.

MDOT A&E Solicitations: State regulations require that a transportation agency wishing to procure A&E services costing more than \$200,000 must submit to the Secretary of Transportation documentation to support its position that the services cannot be provided feasibly or economically by existing in-house resources. If the Secretary certifies that the services cannot be provided by existing in-house resources, MDOT must place public announcements in the *Daily Record*, eMaryland Marketplace, or other appropriate publications indicating that the request to procure A&E services has been certified by the Secretary.

Background: In February 2016, the Governor established the Commission to Modernize State Procurement, chaired by the Lieutenant Governor. The commission met eight times and held three regional public forums. The commission issued its final report in December 2016, which included 57 recommendations divided into five major categories. This bill implements some of the commission's recommendations.

Additional Information

Prior Introductions: None.

Cross File: SB 310 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Governor's Office; Department of General Services; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2017
mm/ljm Third Reader - March 27, 2017
Revised - Amendment(s) - March 27, 2017

Analysis by: Michael C. Rubenstein

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Improving the State Procurement Oversight Structure

BILL NUMBER: SB 310/HB 390

PREPARED BY: GLO
(Dept./Agency/GLO)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

SB310 will not have a meaningful economic impact on Maryland small businesses.