

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 1144

(Senator Robinson)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement Preferences - Blind Industries and Services of Maryland -
Janitorial Products

This bill specifies that an existing requirement that a prime contractor on a State contract that includes housekeeping or janitorial services procure janitorial products from Blind Industries and Services of Maryland (BISM) applies only if the products are made, manufactured, remanufactured, or assembled by BISM and are available.

The bill takes effect May 1, 2018.

Fiscal Summary

State Effect: No direct effect on State operations or finances, but to the extent that the bill severely reduces BISM's revenues and/or causes it to close its Baltimore facility, State general fund expenditures likely increase to provide rehabilitation services to blind and disabled persons. No direct effect on revenues.

Local Effect: No direct effect on local governmental operations or finances.

Small Business Effect: Potential meaningful for small businesses that sell janitorial products to the extent that the bill weakens BISM's preference associated with repackaged products.

Analysis

Current Law/Background: State procurement law defines a "preferred provider" to be a provider of supplies or services that is given preference in specified provisions of current State procurement law. Chapter 313 of 2016 consolidated certain procurement preferences

such that, currently, a State or State-aided or -controlled entity must buy supplies and services from Maryland Correctional Enterprises (MCE) first, then BISM, and finally the Employment Works Program. The Employment Works preference applies only if a community service provider or a business owned by an individual with a disability provides the supplies or services, neither MCE nor BISM can do so, and the State or a State-aided or -controlled entity is not required by law to buy the supplies or services from any other unit of State government. Only if none of those entities provides the desired supplies or services may a State agency issue a competitive procurement.

In addition, Chapters 343 and 605 of 2013 established that janitorial products have to be procured from BISM, to the extent practicable, when a State or State-aided or -controlled entity has a maintenance contract with a component for housekeeping or janitorial services. Thus, the prime contractor must purchase janitorial products from BISM when the specified products are available.

Chapters 343 and 605 removed “not-for-profit entity organized to promote the interests of physically or mentally disabled individuals” from the definition of minority business enterprise (MBE), meaning that BISM no longer qualified as an MBE under State law. However, BISM did retain its procurement preference, which was strengthened by Chapters 343 and 605. BISM advises, however, that it rarely is able to take advantage of that preference and bid on a State maintenance contract as a prime contractor because it typically does not provide the full range of services and products required by those contracts. That gives agencies the authority to procure those contracts competitively. Prior to the enactment of Chapters 343 and 605, BISM relied on its MBE status to get subcontracts for janitorial products from prime contractors on State maintenance contracts. When it lost that status, the General Assembly included the procurement preference described above to maintain BISM’s preference for providing janitorial products for State maintenance contracts for which BISM did not serve as the prime contractor.

Since Chapters 343 and 605 added the procurement preference for BISM’s janitorial supplies, concern has been raised that it may disadvantage MBEs seeking to sell similar supplies to prime contractors that are awarded maintenance contracts by the State. Chapter 415 of 2015 requires the Department of General Services (DGS) to report annually for three years on the effect that the BISM preference for janitorial products has on MBEs. DGS has submitted the first two of three required reports; they both indicate that, due to poor data quality, DGS has not been able to ascertain a baseline level of payments made to MBEs for janitorial products under State contracts prior to the BISM preference taking effect July 1, 2015. Therefore, a comparison between payments made to MBEs before and after the BISM preference took effect is likely not possible. The January 2016 report identified total payments of almost \$8,000 to BISM for contracts issued on or after July 1, 2015. The January 2017 report did not include a tally of payments to BISM, but it indicated that the final report in January 2018 would include those calculations.

A 2002 decision by the Maryland Court of Appeals concluded that BISM's "preferred provider" status under State procurement law does not apply when BISM acts as a broker or retailer who transfers products to the purchaser. BISM advises that it "trains and employs blind and other disabled persons to mix, pour, formulate, consolidate, allocate, package, and ship janitorial products" to its customers. It also advises that it purchases products from vendors in bulk form that it then repackages for sale to its customers, including the State.

State Fiscal Effect: According to a February 2016 performance audit by the Office of Legislative Audits (OLA), BISM's product sales totaled \$84.0 million, of which approximately \$10.5 million came from sales to the State. BISM advises that, for fiscal 2016, the comparable figures are \$103.0 million in sales, including \$10.4 million to the State. OLA's report also indicates that, in fiscal 2015, BISM provided rehabilitation and training services to 784 persons, with the cost shared between the State (\$876,400) and BISM (\$703,100).

BISM advises that the bill may result in the loss of as much as \$3.0 million in revenue from the sale of janitorial products to prime contractors on State contracts. It further advises that a loss of that magnitude would likely lead to the closure of its Baltimore facility, resulting in the loss of at least 85 jobs, including 54 jobs for blind individuals. The Division of Rehabilitation Services advises that the combination of the loss of jobs and related services for blind individuals and the loss of revenue that is used to share in the cost of rehabilitation services with the State may result either in State general fund expenditures increasing to fill the void left by BISM or an increase in the number of blind individuals on waiting lists for services. The Department of Legislative Services cannot reliably predict the likelihood of these events occurring, or their potential fiscal effect, but to the extent that they do occur, the effect on State expenditures could be substantial.

The OLA audit also found that BISM's prices for janitorial products are generally competitive with market prices. Therefore, any shift by prime contractors purchasing janitorial products from other vendors besides BISM likely has no material effect on State expenditures.

Additional Information

Prior Introductions: None.

Cross File: HB 1446 (Delegate Hayes, *et al.*) - Health and Government Operations.

Information Source(s): Baltimore City; Harford and Montgomery counties; Department of General Services; Governor's Office of Minority Affairs; Maryland State Department

of Education; University System of Maryland; Department of Budget and Management; Board of Public Works; Maryland Department of Transportation; Blind Industries and Services of Maryland; Department of Legislative Services

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