

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 9

(Senator Elfreth)

Budget and Taxation

State Personnel – Executive Branch Service Contracts – Policy, Certification, and Notification

This bill expands a statutory preference for using State employees – instead of private contractors – to perform State functions to *all* State functions, not just those performed in State-operated facilities. It clarifies that Executive Branch agencies must comply with notification requirements in current law when entering into a service contract that is not exempt from the statutory preference. Finally, it requires State agencies to provide exclusive representatives of affected employees with a copy of a certification by the Department of Budget and Management (DBM) that a service contract is eligible for approval by the Board of Public Works (BPW) even though it is not exempt from the statutory preference. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all funds) to hire State employees to perform services currently performed by contractors; offsetting reductions in procurement costs for services; and/or potential significant disruptions and delays in the procurement of service providers. Any such effects cannot be reliably estimated, as discussed below. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: 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.

A “service contract” is a contract for services that are (1) provided to a unit in the Executive Branch; (2) performed in a State-operated facility; and (3) expected to exceed an annual cost of \$100,000. “Services” includes legal, accounting, medical, and consulting services, but it does not include construction-related services, architectural services, engineering services, or energy performance contract services.

In general, at least 60 days before issuing a solicitation for a service contract, an Executive Branch agency must provide the exclusive representative of the employees who may be affected by the service contract with (1) a written notice with specified information and (2) a reasonable opportunity to meet and discuss alternatives to the proposed service contract. BPW may approve a service contract only if:

- the General Assembly authorizes or requires that certain services be performed by an independent contractor;
- DBM certifies that the contract is exempt from the statutory preference and notification requirements, as discussed below; or
- DBM certifies that nonexempt contracts meet specified requirements, as discussed below. *The bill requires DBM to send a copy of the certification of nonexempt contracts to the exclusive representative of the affected employees.*

A contract is exempt from the statutory preference and notification requirements if:

- State employees are not available to perform the services;
- a conflict of interest would result if a State employee performed the services;
- the nature of the services meets the standards set by DBM for emergency appointments;
- the services are incidental to the purchase or lease of personal property or real property; or
- a clear need exists to obtain an unbiased finding or opinion.

DBM may certify a nonexempt contract as being eligible for approval by BPW only if:

- the potential economic advantage of entering into the service contract is not outweighed by the statutory preference to use State employees;
- the service contract does not adversely affect the State’s affirmative action efforts;

- the service contract includes adequate control mechanisms; and
- the service contract complies with State procurement law.

State Fiscal Effect: The Department of General Services (DGS) advises that it currently oversees approximately 13,000 active contracts for services, the vast majority of which are not provided in State-operated facilities and, therefore, not subject to notification requirements under current law (*e.g.*, laboratory services, consultants, delivery services). Under the bill, as those contracts come up for rebid or renewal, they will have to undergo review to determine if they are exempt or nonexempt. This may require additional staff for DBM to complete the review process for a large volume of contracts, but a reliable estimate is not feasible since DBM currently reviews very few contracts annually.

Contracts that are not deemed exempt will be subject to the notification procedures described above, potentially delaying the procurement process. To the extent that the negotiation process with the exclusive representatives of the affected employees results in a decision to use State employees, agencies may need to hire additional employees to perform work currently carried out by service contractors. A reasonable estimate of any such increase (and offsetting reduction in contract costs) is not feasible because it depends on the volume of contracts subject to notification requirements, the nature of the services provided, and the outcomes of the negotiations between agencies and exclusive representatives.

Contracts overseen by DGS do not include service contracts by the Maryland Department of Transportation or the University System of Maryland.

Small Business Effect: To the extent the bill results in State employees carrying out more State functions, small businesses have fewer opportunities to participate in State procurements for services. For example, DGS advises that almost 2,000 of the 13,000 services contracts it procures or oversees have a certified small business as the prime contractor. Further, approximately 750 services contracts have a minority business enterprise (MBE) prime contractor, more than 150 have MBE subcontractors, and more than 30 have a veteran-owned small business enterprise as a prime contractor or subcontractor.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Board of Public Works; Department of Legislative Services

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km/ljm

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