

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 243 (Delegate Carozza, *et al.*)
Health and Government Operations

Procurement - Veteran-Owned Small Business Enterprises - Participation Goal

This bill raises the annual contract award goal for Executive Branch agencies under the Veteran-Owned Small Business Enterprise (VSBE) program from 0.5% to 5.0% of the total dollar value of their procurement contracts.

Fiscal Summary

State Effect: State spending on procurements (all funds) may increase beginning in FY 2016 to the extent the bill reduces competition among bidders and offerors. Any increase cannot be reliably estimated. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful, especially for small businesses owned and operated by veterans.

Analysis

Current Law: Chapters 507 and 508 of 2010 established VSBE, 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 responsive

bidders that meet or make a good faith effort to meet the established contract goal. 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.

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.

State Expenditures: Total procurement spending could increase slightly beginning in fiscal 2016 to the extent that the bill reduces the competitiveness of State procurements. Limiting contract awards to a specified subclass of vendor limits competition for State contract dollars. Moreover, to the extent that the bill imposes additional burdens on bidders and offerors to make good faith efforts to include veteran-owned businesses as subcontractors, it could further diminish competition by reducing the number of firms willing or able to bid on State contracts. The effect of reduced competition on procurement spending cannot be estimated reliably.

Small Business Effect: Raising the contract award goal should increase opportunities for veteran-owned small businesses in Maryland to get contracts with the State.

Additional Information: If agencies are not allowed to credit the participation of firms that are certified as both VSBEs and minority business enterprises (MBEs) to both program goals, the expansion of VSBE may have a detrimental effect on the State's MBE

program. Currently, agencies are not barred from crediting a dually certified firm's participation on a contract toward both MBE and VSBE contract goals. BPW advises that the Office of the Attorney General has advised that State law is silent on the issue of dual credit, making it a policy issue rather than a legal issue. Currently, firms are discouraged but not prohibited from awarding credit toward both MBE and VSBE participation for a dually certified firm, and the Governor's Office of Minority Affairs reports that there is anecdotal evidence that some agencies have reduced some MBE contract goals as a result. BPW acknowledges that the number of dually certified firms is very low, but it does not have a reliable count.

Additional Information

Prior Introductions: None.

Cross File: SB 350 (Senator Edwards, *et al.*) - Education, Health, and Environmental Affairs. Also, HB 36 (Delegate Schulz - Health and Government Operations) is identical to this bill.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Governor's Office of Minority Affairs, Maryland Department of Transportation, Vetbiz.gov, Department of Legislative Services

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