

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1431 (Chair, Health and Government Operations Committee)
(By Request – Departmental – Veterans Affairs)
Health and Government Operations Education, Health, and Environmental
Affairs

**Procurement - Small Business Preference Program - Veteran-Owned and
Disabled Veteran-Owned Small Businesses**

This departmental bill adds a 2% price preference for veteran-owned small businesses and a 3% price preference for disabled veteran-owned small businesses to the existing price preference for all small businesses under the State's Small Business Preference Program. The bill also increases the maximum small business price preference for any procurement from 5% to 8%.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Negligible effect on State procurement expenditures. The bill's provisions could be implemented by participating State agencies with existing resources.

Local Effect: None.

Small Business Effect: The Department of Veterans Affairs has determined that this bill has a meaningful impact on small business (attached). Legislative Services concurs with this assessment, as discussed below.

Analysis

Bill Summary: A veteran is defined, consistent with federal law, as a person who served in the active military, naval, or air service, and who was discharged or released from that service under conditions other than dishonorable. A disabled veteran is defined as a veteran who has been certified by the U.S. Department of Veterans Affairs as having a service-connected disability, regardless of the disability rating.

A veteran-owned small business is defined as a small business that is at least 51% owned and controlled by one or more veterans. A disabled veteran-owned small business is defined as a small business that is at least 51% owned and controlled by one or more disabled veterans.

Current Law: The Small Business Preference (SBP) Program applies to procurement of supplies, services, and construction-related services by the Department of General Services, the Maryland Department of Transportation, Morgan State University, and, with respect only to the construction of a State correctional facility, the Department of Public Safety and Correctional Services. Each agency (except DPSCS) is authorized to define what constitutes a small business for the purpose of the program, and the criteria may vary among industries to reflect their particular characteristics. DGS and MDOT are also authorized to designate procurements that qualify under SBP.

Although the University System of Maryland was originally required to participate in the Small Business Preference Program, Chapter 515 of 1999 exempted USM from most State procurement law, including SBP.

SBP allows DGS and MDOT to establish a price preference of not more than 5% for small businesses who bid on qualified procurements; both agencies use a 5% preference. This allows each agency to award a procurement contract to a responsible small business if the gap between the small business bid and the lowest bid from a nonsmall business is less than the established price preference.

Background: In fiscal 2006, MDOT awarded 14 contracts under SBP, with a total value of \$81,156, and DGS awarded 4 contracts (all to the same vendor) with a total value of \$226,377. In both cases, contract awards under the program represented less than 1% of all agency contract awards; additional costs to the State from the price preference were negligible. Morgan State joined the program in fiscal 2007, and DPSCS is not required to submit annual reports.

In addition to SBP, the State operates a Small Business Reserve Program, established by Chapter 75 of 2004. The program requires 22 designated agencies to structure their procurement procedures so that at least 10% of the total value of each agency's procurements of goods, supplies, services, maintenance, construction,

construction-related services, architectural services, and engineering service contracts are made directly to small businesses. The reserve program is scheduled to terminate September 30, 2010. Chapter 75 also defined a small business as either a minority-owned business that meets the criteria specified below, or a business other than a broker that is:

- independently owned and operated;
- not a subsidiary of another firm; and
- not dominant in its field of operation.

In addition, a business must meet the following criteria to qualify for small business certification by the State:

- average gross sales over the last three years did not exceed \$2.0 million in retail operations, wholesale operations, manufacturing operations, or service operations;
- average gross sales over the last three years did not exceed \$7.0 million in construction operations; and
- the firm does not employ more than 25 people in its retail operations, 50 people in either its wholesale or construction operations, or 100 people in either its service or manufacturing operations.

In December 2005, the Task Force on Assistance to Disabled Veterans Establishing Small Businesses reported that there were 463,000 veterans living in Maryland, of whom approximately 53,000 were disabled. However, the task force was not able to determine how many of these individuals owned small businesses. The task force recommended that the State:

- implement a tracking system for service-disabled veteran-owned businesses in Maryland;
- establish, within existing procurement programs, accommodations specifically to assist disabled veteran-owned businesses in Maryland; and
- establish a training program for service-disabled veterans with an emphasis on business development and government procurement.

State Expenditures: Legislative Services does not expect this bill to have a significant effect on State procurement spending. Although the bill raises the maximum level of small business price preferences from 5% to 8%, the limited number of agencies that participate in SBP combined with the minimal number and value of contracts that have

been subject to the price preference indicate that the bill's overall effect on procurement spending will be negligible.

DGS, MDOT, Morgan State University, and DPSCS can implement the bill's provisions with existing resources.

Small Business Effect: The bill could increase participation in State procurement for small businesses owned and operated by veterans, especially disabled veterans.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Legislative Services

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mll/rhh

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