

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 38 (Senator Muse)
Education, Health, and Environmental Affairs

**State Finance and Procurement - Maryland Environmental Service - Small
Business Reserve Program**

This bill adds the Maryland Environmental Service (MES) to the list of State agencies subject to the Small Business Reserve (SBR) program.

Fiscal Summary

State Effect: Potential minimal increase in procurement costs for State projects administered by MES caused by awarding more procurement contracts to small businesses that may not offer the same efficiencies as large businesses. It is assumed that MES will pass through any procurement cost increases to the public and private entities, including the State, on whose behalf it administers those contracts.

Local Effect: Potential minimal increase in the cost of projects administered by MES on behalf of local government clients.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business 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 do not exceed \$2.0 million for manufacturing firms, \$3.0 million for retail firms, \$4.0 million for wholesale distributors, \$4.5 million for architectural and engineering firms, \$7.0 million for construction firms, and \$10.0 million for service firms; 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, manufacturing, or architectural and engineering operations.

The Department of General Services (DGS) is responsible for certifying small businesses. Small businesses self-report their small business status, which DGS does not independently verify. SBR is scheduled to terminate September 30, 2010. Departmental legislation has been introduced to reauthorize the program.

SBR requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by DGS, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors.

The most recent expansion of SBR occurred in 2008, when Chapter 9 substituted the Department of Information Technology for the Department of Budget and Management, and Chapters 388 and 389 added the Maryland Transportation Authority to the list of agencies subject to SBR, bringing the total number to 23.

Background: MES is an instrumentality of the State and a public corporation that provides water supply, wastewater treatment, and waste management services to public and private entities on a fee-for-service basis. MES constructs, operates, and maintains various water, sewer, and solid waste plant facilities under contracts with the State of Maryland, its political subdivisions, and private enterprises. Additional services offered include sludge and dredged materials management.

As of June 30, 2009, MES operated and maintained 593 projects, of which approximately 300 were State-related projects. As a nonbudgeted entity, MES generates approximately \$100 million annually in gross revenue from its State, local, and private-sector clients. Approximately 20% of its annual revenue stems from projects mandated by executive order, such as water and sewer facilities for State prisons and parks, and 30% comes from local governments.

Currently more than 6,000 certified small businesses in Maryland are eligible to participate in SBR. **Exhibit 1** shows the program's results for the 22 agencies subject to

SBR in fiscal 2008, the most recent data available. Based on these figures, only 4 of the 22 agencies achieved the program's target of 10% of procurement dollars being awarded to certified small businesses. Procurement expenditures under SBR totaled \$131.6 million in fiscal 2008, which is 6% of the total State procurement expenditures.

Exhibit 1
Percentage of Procurement Dollars Going to Certified Small Businesses
Fiscal 2008

<u>Agency</u>	<u>% of Procurement Dollars</u>
Treasurer's Office	20.8%
Morgan State University	11.1%
Housing and Community Development	11.1%
Stadium Authority	10.0%
State Police	9.5%
Natural Resources	8.9%
Business and Economic Development	8.0%
General Services	7.8%
Transportation	7.8%
Retirement	6.2%
Insurance Administration	6.1%
Public Safety and Correctional Services	6.0%
University System of Maryland	5.4%
Labor, Licensing, and Regulation	5.2%
Health and Mental Hygiene	4.6%
Budget and Management	4.6%
Environment	4.3%
Port	4.1%
Education	3.4%
Human Resources	3.2%
Juvenile Services	1.1%
Lottery	0.8%
Total	6.0%

Source: Governor's Office of Minority Affairs

State Fiscal Effect: Compared with the State's Minority Business Enterprise program and other procurement preference programs, SBR requires relatively little oversight by a participating procurement office. Besides setting aside approximately 10% of the value of its procurement for small businesses and conducting initial outreach to registered small businesses, a participating State agency does not need to institute any new procurement procedures or policies to implement SBR. Therefore, Legislative Services believes that MES can likely implement SBR with existing resources.

Small businesses often struggle to compete for State procurements because they lack capacity to carry out large projects or because large companies can underbid small companies as they can perform the work more efficiently due to their large scale. To the extent that SBR procurements result in higher costs for State projects conducted by MES, State expenditures for those projects may increase slightly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office, Department of General Services, Maryland Environmental Service, Department of Legislative Services

Fiscal Note History: First Reader - January 21, 2010
mpc/rhh

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