

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 129 (Delegate Morhaim)
Health and Government Operations

Procurement - Veteran-Owned Small Business Enterprise Participation - Award of Contracts

This bill requires agencies to award contracts with an expected goal for veteran-owned small business participation (1) to a responsible bidder or offeror that meets or makes a good faith effort to meet the expected contract goal and (2) in accordance with existing procurement law governing the award of contracts using competitive sealed bids.

Fiscal Summary

State Effect: None. The bill is technical in nature and does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapters 507 and 508 of 2010 established the Veteran-Owned Small Business Enterprise (VSBE) program, 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 responsible and responsive bidders or offerors that meet or make a good faith effort to meet the applicable goal established under the program. This bill makes technical changes to the contract award provisions in the original legislation. 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.

Additional Comments: The bill requires that contracts with VSBE contract goals be awarded in accordance with § 13-103(e) of the State Finance and Procurement Article. That section governs the award of contracts carried out using the competitive sealed bid method. However, some contracts with VSBE goals may be awarded using the competitive sealed proposal method. The criteria used to award contracts under the two methods are substantively different, and it would be inappropriate to award a contract procured with competitive sealed proposals under criteria used to award competitive sealed bid contracts.

Additional Information

Prior Introductions: None.

Cross File: SB 30 (Senator Peters) - Education, Health, and Environmental Affairs.

Information Source(s): Board of Public Works, Department of General Services, Maryland Department of Transportation, Vetbiz.gov, Department of Legislative Services

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