

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 243

(Senator Feldman, *et al.*)

Finance

Appropriations

**State Personnel and Procurement - Service Contracts - Reporting and Audit
Requirements**

This bill requires an Executive Branch agency that seeks to enter into a service contract that is not exempt from the explicit preference in State law to use State employees to provide services to provide the exclusive representative of employees who may be affected by the contract with a reasonable opportunity to meet and discuss alternatives to the proposed contract. It further specifies that nonexempt service contracts are subject to legislative audits to determine compliance with requirements; the audit findings must be made available to the public. Executive Branch units with independent personnel management systems must adopt rules and regulations similar to those in the bill.

Fiscal Summary

State Effect: General fund expenditures by the Office of Legislative Audits (OLA) may increase, to the extent that the number of nonexempt contracts subject to audit increases substantially. The University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) can develop and implement similar policies with existing budgeted resources. However, implementation of the policies may delay the procurement of service contracts. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

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. Service contracts with a value of at least \$100,000 are exempt from this statutory preference when:

- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;
- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property;
- a clear need exists to obtain an unbiased finding or opinion; or
- the General Assembly authorizes or requires that certain services be performed by an independent contractor.

Under State procurement law, the Board of Public Works (BPW) controls most State procurement in the Executive Branch but has delegated control of service contracts to the Department of Budget and Management (DBM) under authority given to it by statute. If a service contract is not exempt from the preference to use State employees under any of the specific exemptions in the law, DBM may certify the contract as exempt only if the agency has provided DBM with an analysis of the cost of the contract that shows that it will save the State at least \$200,000 or 20% of the value of the contract, whichever is less, over the life of the contract.

Currently, procurement units seeking DBM certification of nonexempt service contracts must develop assistance plans for State employees adversely affected by the contract. At least 60 days before issuing a solicitation for a nonexempt contract, they must also provide prior notification to the employees' exclusive representative of the adverse impact to the employees.

In general, procurements by USM, MSU, and SMCMM are exempt from State procurement law. However, contracts for services (and capital improvements) by those institutions valued at more than \$1.0 million are subject to BPW review and approval. DBM does not review service contracts procured by the universities.

Services are defined as the labor, time, or effort of a contractor and any product or report necessarily associated with the rendering of a service. They include services provided by attorneys, accountants, physicians, consultants, and other professionals who are independent contractors. Services do not include construction-related services, architectural services, engineering services, or energy performance contract services.

OLA is required to conduct an audit of each Executive Branch agency at least once every three years.

Background: The State Personnel Management System includes most employees in Executive Branch agencies; the Judicial and Legislative branches each have independent personnel systems but are not subject to State procurement law. Therefore, they are not affected by the bill. An Executive Branch agency may, if expressly authorized in statute, establish an independent personnel management system. The Maryland Department of Transportation (MDOT) and USM have the two largest independent personnel management systems in the Executive Branch.

DBM advises that most MDOT service contracts have typically been subject to its review and certification, but, as noted above, service contracts by USM, MSU, and SMCM have not been subject to DBM review and certification. Therefore, the bill's greatest effect is on the public institutions of higher education, which will have to adopt similar procedures as those for other Executive Branch agencies.

The vast majority of service contracts subject to current law are certified by DBM as being exempt because State employees are not available to perform the services or because they involve legislative mandates, but some respondents identified a handful of service contracts that either were not exempt or may not have been exempt.

State Expenditures: Under current law, the number of nonexempt service contracts subject to audit by OLA is negligible and likely zero in most years. However, to the extent that USM, MSU, and SMCM adopt similar policies that result in a substantial number of nonexempt contracts, the workload for OLA increases and may require additional audit staff to comply with the bill's requirements. USM does not anticipate a substantial number of nonexempt contracts, but given that no policy currently exists, the Department of Legislative Services cannot make a reliable estimate of the potential number of nonexempt contracts.

Additional Information

Prior Introductions: None.

Cross File: HB 158 (Delegate Haynes, *et al.*) - Appropriations.

Information Source(s): Department Legislative Services - Office of Legislative Audits, Department of Budget and Management, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

Fiscal Note History:
md/ljm

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