

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1084

(Senator Waugh)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Finance and Procurement - Veteran-Owned Small Business Enterprises -
Definitions and Penalties**

This bill repeals a requirement that a veteran-owned small business enterprise be verified by the Center for Veterans Enterprise (CVE) of the U.S. Department of Veterans Affairs. Instead, it defines a “veteran-owned small business enterprise” to be any business that meets federal standards for the size of small businesses and is at least 51% owned by one or more individuals who are veterans, as defined by the bill, and who control the management and daily operations of the business. A person that willfully misrepresents a business as a veteran-owned small business enterprise for the purpose of obtaining or retaining a contract or subcontract may be subject to (1) suspension or debarment or (2) civil penalties under the Maryland False Claims Act.

The bill takes effect October 1, 2018.

Fiscal Summary

State Effect: Under the assumptions explained below, the Department of Information Technology (DoIT) can absorb any expenditures necessary to reprogram eMaryland Marketplace (eMM) within existing budgeted resources. The bill’s penalty provisions are not expected to have a material effect on State finances.

Local Effect: None.

Small Business Effect: Potential meaningful for veteran-owned small businesses, which no longer have to complete the verification process required by CVE in order to qualify for a State procurement preference.

Analysis

Current Law: Chapters 507 and 508 of 2010 defined a “veteran-owned small business enterprise” as a business that is verified by CVE of the U.S. Department of Veterans Affairs. Each State agency must structure its procurement procedures to try to award at least 1.0% of the total dollar value of its procurement contracts to veteran-owned small business enterprises.

Small Businesses: For the State’s Small Business Reserve Program (SBR), Chapter 75 of 2004 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, Chapters 538 and 539 of 2012 (as amended by Chapter 76 of 2014) established that, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did 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; *or*
- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

Small businesses self-report their small business status by registering on eMM, the State’s online procurement portal. DoIT administers eMM.

Chapter 119 of 2016 transferred responsibility for administering SBR from the Department of General Services to the Governor’s Office of Minority Affairs (GOMA).

Federal regulations establish size standards for businesses eligible for assistance from the U.S. Small Business Administration. The standards are expressed either in terms of the number of employees or annual receipts, and they vary by industry code.

Debarment and the Maryland False Claims Act

Although not explicitly defined in statute, “debarment” means being prohibited from entering into a contract with a public body in the State. Statute specifies circumstances under which persons are automatically debarred; in cases where debarment is discretionary, as in this bill, the Board of Public Works determines whether a person should be debarred, often based on a recommendation by the Attorney General following an investigation.

Persons who are found to have violated the Maryland False Claims Act are subject to a civil penalty up to \$10,000 for each violation.

Background: In fiscal 2016, State agencies awarded 0.58% of the total dollar value of their procurements to veteran-owned small businesses, falling short of the 1.0% statutory goal.

A 2012 report by the U.S. Government Accountability Office found that the federal Service-Disabled Veteran-Owned Small Business program remained vulnerable to fraud and abuse because more than half of firms applying for verification had not been verified, but they had received \$90 million in federal set-aside or sole-source contracts. More recent data is not available, although there have been individual cases of firms being convicted of fraud for falsely claiming to be owned and operated by veterans.

State Fiscal Effect: Under current law, procurement officers verify the status of veteran-owned small businesses seeking preference under State procurement law by accessing CVE's online database. Thus, there is no State cost associated with the verification requirement.

For this analysis, it is assumed that, under the bill, veteran-owned small businesses can self-certify upon registering with eMM in the same manner that small businesses self-certify on eMM. This is in contrast to the certification process for minority-owned business enterprises (MBEs), which undergo rigorous screening by the Maryland Department of Transportation that can take several months to complete.

GOMA indicates that the certification of veteran-owned small businesses under the bill has no fiscal effect. If GOMA elects to use the same self-certification process for veteran-owned small businesses as it currently uses for small businesses, which is expected, DoIT can absorb the minimal costs to reprogram eMM to accommodate the self-certification with existing resources. However, if GOMA determines that a more rigorous screening process comparable to that used for MBEs is warranted to verify that veteran-owned small businesses meet the criteria for small businesses and that they are at least 51% owned and managed by veterans, general fund expenditures by GOMA likely increase significantly for staff to implement the screening process.

Additional Information

Prior Introductions: None.

Cross File: HB 587 (Delegate Reznik, *et al.*) - Health and Government Operations.

Information Source(s): Department of Budget and Management; Board of Public Works; Department of General Services; Governor's Office of Minority Affairs; Maryland Department of Transportation; U.S. Government Accountability Office; Department of Legislative Services

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