

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 721

(Senator Hester)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement - Small Business Reserve Program - Administration and Application

This bill requires that specified contracts eligible for the Small Business Reserve (SBR) program and with a total value of \$500,000 or less be designated for SBR, subject to specified guidelines and exemptions. It also requires public four-year institutions of higher education in the State to participate in SBR. The Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) must take additional actions related to SBR and report annually on the effectiveness of the program. Provisions of the bill are severable.

Fiscal Summary

State Effect: The bill generally codifies provisions of Executive Order 01.01.2021.01 and does not materially affect Executive Branch agencies. However, application of SBR to procurements by institutions of higher education may increase their overall procurement expenditures, except for the University System of Maryland (USM), as discussed below. Any other costs associated with implementing SBR in public four-year institutions of higher education (other than USM) likely can be absorbed within existing resources. GOSBA can complete required reports and likely handle review of requests for exemptions with existing staff, but additional resources may be necessary to ensure timely review to the extent that inclusion of higher education institutions in SBR significantly increases the volume of requests. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill requires GOSBA to:

- develop guidelines in consultation with the Office of the Attorney General to ensure operation of SBR in compliance with federal law;
- develop guidelines in consultation with the Office of State Procurement (OSP) within the Department of General Services (DGS) to allow for efficient exemptions of procurements from SBR, including term and master contracts;
- assist small businesses in complying with procedures for responding to a procurement solicitation; and
- increase awareness of procurement opportunities for small businesses, especially for businesses that have been in operation for three years or less.

Any procurement for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services that is otherwise eligible for SBR and that has a total dollar value of \$500,000 or less must be assessed under the guidelines developed by GOSBA. Based on the assessment, the agency carrying out the procurement must either designate it for SBR or request an exemption certified by GOSBA that it is not practicable to designate the procurement for SBR.

USM, Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are subject to SBR.

Current Law:

Small Business Reserve Program

SBR requires most State agencies to structure their procurements so that at least 15% of the total dollar value of their procurements is made directly to small businesses; Chapter 438 of 2017 raised the goal from 10% to 15%. Under regulations governing the program, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 15% of its forecasted spending to contracts for small businesses serving as prime contractors. Under Chapter 438, an agency can apply toward its total SBR participation goal only payments made under a contract that is *designated* as an SBR procurement (not all payments to small businesses). The Special Secretary of Small, Minority, and Women Business Affairs must, in consultation with the Attorney General, establish standards and guidelines for participation in SBR every five years.

USM, MSU, and SMCM are exempt from most provisions of State procurement law, including SBR.

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, 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 eMaryland Marketplace Advantage, the State’s online procurement portal. Chapter 119 of 2016 transferred responsibility for administering SBR from DGS to GOSBA and repealed its termination date, making the program permanent.

Governor’s Executive Order

Executive Order 01.01.2021.01, signed by the Governor on January 6, 2021, requires that any procurement by an Executive Branch agency for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services with a total dollar value between \$50,000 and \$500,000 be designated for SBR, except for:

- procurements from a preferred provider;
- procurement involving expenditures of federal dollars, if inclusion in SBR conflicts with federal law or grant requirements;
- small procurements;
- procurements of human, social, cultural, or educational services; and
- certain term or master contracts, as determined by GOSBA and OSP.

A procurement is exempt from designation for SBR if GOSBA certifies, concurrently with the review of any waiver determinations for certified minority business enterprise contract

goals, that it is not practicable to do so. OSP must assist GOSBA in establishing procedures and guidelines for the efficient exemption of procurements from SBR.

The executive order does not contravene federal law or affect the State's receipt of federal funding, and its provisions are severable.

State Expenditures: Prior to the enactment of Chapter 438 of 2017, USM, SMCM, and MSU were subject to SBR, but Chapter 438 repealed the requirement that they participate in the program. As USM advises that it has nevertheless continued to participate in the program, the bill has no effect on USM. Otherwise, the application of SBR to procurements by institutions of higher education may increase their overall procurement expenditures to the extent that small businesses provide goods and services less efficiently than large businesses. Any such effect cannot be reliably estimated but may be meaningful.

Small Business Effect: Small businesses benefit from more contracting opportunities with MSU and SMCM. Otherwise, the bill has no effect on small businesses because the bill generally codifies the provisions of the existing executive order.

Additional Comments: The analysis of the fiscal impact for this fiscal and policy note assumes the guidelines adopted by GOSBA mirror those in the executive order, such that procurements designated for SBR range in value from \$50,000 to \$500,000, even though the bill could apply to procurements with a total dollar value less than \$50,000.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 797 (Delegate Qi) - Health and Government Operations.

Information Source(s): Governor's Office of Small, Minority, and Women Business Affairs; University System of Maryland; Department of General Services; Department of Legislative Services

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