

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 673

(Senator Charles)

Budget and Taxation

Health and Government Operations

State Procurement - Small Business Reserve Program - Goals and Outreach Program

This bill raises the goal, from 15% to 20%, for the percentage of the total dollar value of contract awards made to small businesses made under the Small Business Reserve (SBR) Program and allows all contract awards made to small businesses to count toward achievement of the goal, not just those designated as SBR contracts. The bill also requires the Maryland Department of Transportation (MDOT) to develop an outreach program to increase the participation of small businesses in the SBR program, and to report on the status of the outreach program. Finally, the bill alters reporting requirements for agencies participating in SBR.

Fiscal Summary

State Effect: State expenditures (all funds) may increase to the extent that agencies set aside more contracts for small businesses to comply with the bill. Set-asides limit competition for State contracts, which has been shown to increase contract costs. Any such effect cannot be reliably estimated but is expected to be minimal, at least in the near future, as discussed below. MDOT can implement the outreach program and submit annual reports with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: By December 1 of each year, MDOT must report to the Board of Public Works and the Legislative Policy Committee on (1) the status of the outreach program and

(2) the total number and dollar value of awards made to small businesses owned by economically disadvantaged individuals under designated SBR contracts.

In their annual SBR reports to the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), which are required under current law, State procurement units must report the number and total dollar value of *awards* (instead of payments) made (1) to small businesses under SBR designated contracts and non-SBR designated contracts and (2) for all procurements.

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 bill* allows agencies to count payments under all contract awards to small businesses toward achievement of the goal. 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.

Within 90 days after the end of each fiscal year, each unit must submit a report to GOSBA that includes (1) the number and dollar value of payments made to small businesses under designated SBR contracts; (2) the number and dollar value of payments made to small businesses under contracts not designated as SBR; and (3) the total dollar value of payments made under all procurement contracts.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law, including SBR.

Under SBR, a "small business" is defined as:

- a certified MBE;
- a veteran-owned small business enterprise; 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, to qualify as a small business, any 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 the Department of General Services to GOSBA and repealed its termination date, making the program permanent.

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 the Office of State Procurement (OSP).

A procurement is exempt from designation for SBR if GOSBA certifies, concurrently with the review of any waiver determinations for certified MBE 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.

Economically Disadvantaged Individuals

An “economically disadvantaged individual” is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged.

An individual with a personal net worth in excess of \$1.5 million, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2024 is \$2,073,412. A “socially disadvantaged individual” is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of his or her membership in a group and without regard to individual qualities.

State Expenditures: The State has never achieved the current 15% goal, whether counting only SBR-designated contracts or all contract awards. In fiscal 2023, 2.7% of all contract payments were made to small businesses under SBR-designated contracts, and 11.7% of all contract payments were made to small businesses. Therefore, raising the goal to 20% has no immediate effect on State procurement activity, because any subsequent increase in awards or payments to small businesses, either because of increased outreach or other factors, only gets the State closer to the current goal.

Only after contract awards exceed the current goal does the bill begin to have a practical effect on procurement costs by limiting more awards only to small businesses. Limiting competition for procurement awards has been shown to increase contract costs.

Small Business Effect: Small businesses may benefit from outreach by MDOT and a greater number of contract awards due to the higher SBR goal.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 962 (Delegate Phillips, *et al.*) - Health and Government Operations.

Information Source(s): Governor’s Office of Small, Minority, and Women Business Affairs; Office of the Attorney General; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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