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Appropriations Committee



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The Maryland House of Delegates

ANNAPOLIS, MARYLAND 21401

May 26th, 2021

Brian E. Frosh,
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Office of Attorney General Frosh:

I write to request the Opinion of the Attorney General regarding universities' obligations under 2016 Md. Laws Ch. 65 ("SB 342"). In particular, I ask for the opinion of the Attorney General regarding (1) what the affected universities' obligations under SB 342 are, and (2) whether, and to what extent, any of the universities' policies governed by SB 342 are currently in compliance with SB 342.

SB 342 requires that the procurement policies of the University System of Maryland ("USM"), Morgan State University ("MSU"), and St. Mary's College of Maryland ("SMCM") must "promote the purposes of § 13-402 of the State Personnel and Pensions Article; and ... to the maximum extent practicable, be similar to § 13-218.1 of [the State Finance and Procurement] Article." Md. Code State Finance and Procurement ("SFP") § 11-203(e)(4)(iii)-(iv).

These provisions, in turn, provide two requirements. First, that each university adopt a policy 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." Md. Code State Personnel and Pensions ("SPP") § 13-402.

Second, SB 342 provides that the university is obligated to provide certain notice and conferral opportunities to affected employees and their certified representatives. SFP § 13-218.1(b)(1). The university is required to provide written notice "at least 60 days before the issuance of a solicitation for a service contract ... [to] the exclusive representative of the employees who may be affected by the service contract." SFP § 13-218.1(b)(1). That notice must include "the work that is being proposed for contracting; and ... contracting procedures, requirements, timetables, and employee rights as provided in Title 13, Subtitle 4 of the State Personnel and Pensions Article." SFP § 13-218.01(b)(1)(i). The university must also provide "a reasonable opportunity to meet and discuss alternatives to the proposed service contract." SFP § 13-218.1(b)(1)(ii).

The notice provided to employees and their certified representatives must comply with SPP §§ 13-401 *et seq.* (“Subtitle 4). SFP § 13-2181(b)(1)(i)(2). Subtitle 4 requires that a government unit seeking to enter a service contract must show that it is in compliance with the policy preference stated by SPP § 13-402, and in seeking certification from DBM that the unit is in compliance, it must demonstrate a number of things. SPP § 13-404(c); 13-405. For instance, the unit is required to compare the cost of the service contract with the cost of using State employees, and show estimated “savings to this State, over the duration of the service contract, of 20% of the contract or \$200,000, whichever is less.” SPP § 13-405(c)(1).

I have attached the procurement policies for MSU, SMCM and USM. MSU last revised its procurement policies in 2005 and has not updated its policies since SB 342 was passed in 2016. It contains no provisions implementing the notice and conferral provisions of SFP § 13-218.1(b)(1). It further contains no provisions implementing the preference for the use of State employees rather than contract employees required by SPP § 13-402.

USM last revised its procurement policies in 2016, shortly after SB 342 was passed. It does not appear to contain any provisions implementing the notice and conferral provisions of SFP § 13-218.1(b)(1). It further appears to contain no provisions implementing the preference for the use of State employees rather than contract employees required by SPP § 13-402. However, the Board of Regents approved VIII-22.00 Policy on Service Contracts on May 1, 2020, which provides certain notice and conferral requirements in line with SFP § 13-218.1(b)(1). Policy VIII-22.00 Section II(A). However, Policy VIII-22.00 differs from the SB 342 requirements in certain ways.

First, Policy VIII-22.00 states that the purpose of the policy is “to use institution employees to continue providing institution services.” Policy VIII-22.00 Section I.A.1. This appears to create a carve out from the SPP § 13-402 requirements for work which USM already contracts out or for services that the university does not currently provide, an exemption that does not exist in SB 342 or SPP § 13-402.

Second, Policy VIII-22.00 contains a provision that requires USM to “estimate [] cost savings, including a comparison of costs of using USM employees versus entering into a service contract.” Policy VIII-22.00 Section II.B.2.b. However, the policy falls short of the SFP § 13-218.1(b)(1) and SPP § 13-405(c)(1) requirement, and does not provide that the savings must either be in excess of 20% of the contract or \$200,000, whichever is lower. It further does not require the institution to provide a specific cost savings percentage as is mandated in SPP § 13-405(c)(1).

Finally, Section III.B of the policy states that “The Chancellor will develop procedures for the review of service contract proposals under Section II(A) of this policy.” However, it is not clear if such procedures have been created, or if service contracts undergo any sort of review to ensure compliance with either Policy VIII-22.00 or SB 342.

SMCM last revised its procurement policies in 2018, after SB 342 was passed. It does not appear to contain any provisions implementing the notice and bargaining provisions of SFP § 13-

218.1(b)(1). It further appears to contain no provisions implementing the preference for the use of State employees rather than contract employees required by SPP § 13-402.

It does not appear that any of the affected universities have revised or modified their policies to account for the requirements of SB 342, with the exception of USM's Policy VIII-22.00, which does not appear to fully comply with SB 342. I therefore write to request the Attorney General's opinion as to (1) what the affected universities' obligations under SB 342 are, and (2) whether, and to what extent, any of the universities' policies governed by SB 342 are currently in compliance with SB 342.

Chairwoman Maggie McIntosh

Maryland General Assembly

Baltimore City 43rd District

A handwritten signature in black ink, appearing to read "Maggie McIntosh". The signature is written in a cursive, flowing style.