

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 995 (Senator Lenett, *et al.*)
Education, Health, and Environmental Affairs

**Competitive Sealed Proposals - Disclosure of Information - Minority Business
Enterprise Participation**

This bill allows a procurement officer to disclose, prior to making a recommendation, the names of teams submitting proposals for a construction contract procured as a competitive sealed proposal to a person outside of the Executive Department. The disclosure may be made only to encourage minority business enterprise (MBE) participation.

Fiscal Summary

State Effect: Potential increase in procurement protests could increase State costs. The potential effect cannot be quantified.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Competitive sealed proposals may be used if the procurement is for social, human, cultural, or educational services. They may also be used if the head of the procurement unit determines that, for a variety of reasons, competitive sealed bidding is not practicable or advantageous to the State.

Once a procurement solicitation is issued and before a procurement officer makes a recommendation, a procurement officer may disclose to a person outside of the Executive

Department only whether a decision has been made regarding the solicitation and information consistent with State law governing public access to public records.

The State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to women-owned businesses. There are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

MBEs include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. The Maryland Department of Transportation is the State's MBE certification agency.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of their membership in a group and without regard to individual qualities. 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 is not considered economically disadvantaged.

The MBE program is scheduled to terminate July 1, 2012.

Background: State law provides 10 purposes of State procurement law, among them:

- providing for increased confidence in State procurement;
- ensuring fair and equitable treatment of people involved with State procurement;

- providing safeguards for maintaining a State procurement system of quality and integrity;
- fostering effective broad-based competition; and
- getting the maximum benefit from the purchasing power of the State.

State Fiscal Effect: Releasing identities of offerors could expose the State to charges of partiality during the procurement process and thus increase the number of procurement protests. It provides an unfair advantage to firms that wait to submit proposals because they can tailor their proposals to address assumed weaknesses in the proposals submitted ahead of them. Likewise, information released to one or more individuals but not shared with others could be viewed as providing an unfair advantage during the procurement process.

Small Business Effect: Small MBEs seeking subcontracts on State construction contracts would have more time and opportunity to market their services to prime contractors submitting offers for State construction contracts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, University System of Maryland, Department of Budget and Management, Department of Legislative Services

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mcp/rhh

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