

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 558

(Senator Pugh, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Minority Business Enterprise Program - Amendments to MBE Participation
Schedule and Extension of Task Force

This emergency bill requires a bidder or offeror on a State procurement contract to submit a written request for approval to amend the MBE participation schedule submitted with the bid or offer if an MBE listed on the schedule has become or will become unavailable, or is ineligible to perform the work required by the contract, before a schedule may be amended. The bill specifies the conditions under which the request may be approved. The bill also extends the termination date for the Task Force on the Minority Business Enterprise Program and Equity Investment Capital by one year until May 31, 2012, and extends the task force's reporting deadline by one year until December 1, 2011.

Fiscal Summary

State Effect: None. The bill generally codifies existing practice, with respect to MBE participation schedules. The Department of General Services (DGS) and Maryland Department of Transportation (MDOT) can continue to staff the task force with existing resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A bidder or offeror must notify a procurement unit within 72 hours if, after the submission of a bid or offer and before the execution of a contract, the bidder or

offeror learns that an MBE listed on the participation schedule has become, or will become, unavailable or ineligible to perform the work. A written request to amend the participation schedule must indicate the bidder's or offeror's efforts to substitute another certified MBE for the MBE that is no longer available. The participation schedule may be amended only with the approval of the unit's procurement officer after consultation with the unit's MBE liaison.

If a contract has already been executed, the MBE schedule may be amended only with the approval of the head of the procurement unit and the contract must be amended.

Current Law:

Minority Business Enterprise Program

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 woman-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.

An 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. An MBE owned by a woman who is also a member of an ethnic or racial minority group is certified as either owned by a woman or owned by a racial or ethnic minority, but not both. The Maryland Department of Transportation (MDOT) 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, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2011 is \$1,530,652.

The MBE program is scheduled to terminate July 1, 2011. (Separate legislation – SB 120/HB 456 – passed during the 2011 session extending the MBE program’s termination date by one year.)

MBE Participation Schedule

The Board of Public Works must issue regulations consistent with State procurement law to carry out the purposes of the MBE program. Procurement regulations issued under this authority require bidders and offerors to submit with each bid or proposal an MBE participation schedule that includes the name of each certified MBE that will participate in the project, the work that each MBE will perform, and the price or contract percentage to be paid to each MBE. Failure to include the participation schedule can result in a bid or proposal being deemed not responsive. The regulations also require that procurement units verify that MBEs listed on the participation schedule actually perform the work and receive compensation consistent with the schedule.

A bidder or offeror may request a waiver from an MBE contract or subcontract goal. A waiver may be granted only if the bidder or offeror reasonably demonstrates that certified MBE participation could not be obtained, or could not be obtained at a reasonable price, and if the agency head determines that the public interest is served by a waiver.

Failure to comply with MBE contract provisions, or to secure a waiver, can result in contract termination, referral to the Attorney General for appropriate action, or initiation of any other specific remedy identified in the contract.

Task Force on the Minority Business Enterprise Program and Equity Investment Capital

Chapter 463 of 2008 established the Task Force on the Minority Business Enterprise Program and Equity Investment Capital, subject to termination on December 1, 2009. The task force met several times during the 2009 interim to review the State’s economic development strategies and the extent to which those strategies encourage investment in MBEs. Members heard presentations from experts on venture capital and from small and minority business owners. The task force did not issue a final report before its scheduled termination.

Chapters 513 and 514 of 2010 reestablished the task force, with DGS and MDOT providing staff for the task force. It has not met since it was reestablished and was scheduled to terminate May 31, 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of General Services, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

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