

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
State Procurement Regulations**
(DLS Control No. 14-027)

Overview and Legal and Fiscal Impact

The proposed regulation establishes how a procurement agency may count the participation of a certified minority business enterprise (MBE) prime contractor towards fulfilling the MBE participation goal and subgoals of a procurement contract.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

State Procurement Regulations:

Socioeconomics Policies:

Minority Business Enterprise Policies: COMAR 21.11.03.12-1

Legal Analysis

Summary of Regulation

The proposed regulation amends COMAR 21.11.03.21-1, which establishes procedures governing how a certified MBE's participation in a contract may be counted toward an agency's MBE participation goal. The proposed regulation adds language stating that when a certified MBE is participating as a prime contractor on a contract, the procurement agency may count the portion of the work that the certified MBE performs with its own workforce toward fulfilling up to 50% of the MBE participation goal and up to 100% of not more than one of the MBE participation subgoals established for the contract, if the certified MBE prime contractor is listed on the MBE participation schedule and is certified by the certification agency to provide the services, materials, or supplies that it has committed itself to self-perform on the MBE participation schedule.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Special Secretary of the Governor's Office of Minority Affairs cites § 14-302 of the State Finance and Procurement Article and Chapter 154 of the Acts of 2012 as authority for the regulation. This legal authority is correct and complete. The regulation complies with the legislative intent of the law.

Section 14-302 of the State Finance and Procurement Article requires that each unit of State government structure procurement procedures to try to achieve an overall percentage goal of the unit's total dollar value of procurement contracts to be made to certified MBEs. The section requires the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, to establish procedures governing how the participation of MBE prime contractors is counted toward contract goals and to adopt regulations setting forth those procedures. The statute also sets forth certain other requirements related to the State MBE program.

Chapter 154 of 2012 extended the termination date of the State's MBE program for four years, until July 1, 2016, and made various changes to the State's MBE program. The Act required that MBE prime contractors meet contract-specific MBE subcontracting goals and required the Special Secretary, in consultation with the Secretary of Transportation and the Attorney General, to establish procedures for counting MBE prime contractors' participation in a contract against a contract's MBE goals. The Act also set forth procedures regarding the contents and use of MBE participation schedules.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations establish procedures governing how the participation of minority business enterprises serving as prime contractors on State contracts is counted toward contract goals. The changes are procedural in nature and have no fiscal effect on State or local agencies. The Department of Legislative Services concurs.

Impact on Budget

There is no effect on the State operating or capital budgets.

Agency Estimate of Projected Small Business Impact

The Governor's Office of Minority Affairs advises that the regulation has a meaningful effect on small businesses in the State. The effect of the regulation is difficult to quantify, but it

should have a favorable effect on minority business enterprises by reducing discriminatory practices. The Department of Legislative Services concurs.

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