

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Transportation
(DLS Control No. 14-294)**

Overview and Legal and Fiscal Impact

This regulation incorporates recent changes to the Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program manual. Specifically, the manual is retitled the “Maryland Minority Business Enterprise Program Manual” and all references to the federal Disadvantaged Business Enterprise Program are deleted from the manual. The federal program is now governed by a separate manual.

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Transportation:

Office of the Secretary: Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program: COMAR 11.01.10.01

Legal Analysis

Background

The Maryland Department of Transportation participates in the State’s Minority Business Enterprise (MBE) Program, which sets goals for agencies to try to achieve greater participation in government contracting by minority business enterprises. A “minority business enterprise” is a legal entity, except a joint venture, that is organized to engage in commercial transactions and is at least 51% owned, controlled, and managed by socially and economically disadvantaged individuals. There is a rebuttable presumption that socially and economically disadvantaged individuals include African Americans, Native Americans, Asians, Hispanics, women, and physically or mentally disabled individuals. The overall percentage goal for minority business enterprise participation in contracting is established on a biennial basis by the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General. The Maryland Department of Transportation certifies, recertifies, and decertifies minority business enterprises and maintains a central directory of minority business enterprises eligible to participate in the State’s MBE program.

The department also participates in a similar federal Disadvantaged Business Enterprise (DBE) Program, which states must implement to receive federal funding from the Federal Highway Administration, Federal Transit Administration, and Federal Aviation Administration.

Until recently, both the State MBE program (which applies to State-funded contracts) and the federal DBE program were governed by the joint Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program manual. However, the department has a new federal DBE Manual that has been approved by the federal government and applies only to the DBE Program. An amendment to the Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program manual was adopted in July 2014 that changed the name of the manual to the “Maryland Minority Business Enterprise Program Manual” and deleted all references to the federal DBE program. The amended MBE manual now applies only to the State MBE program.

Summary of Regulation

The regulation incorporates the Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program manual document by reference. The regulation is amended to reflect the new name of the manual and the July 2014 amendment that deleted all references in the manual to the federal DBE program. No other changes are made to the manual or the regulation.

Statutory Authority and Legislative Intent

The department cites provisions of the Transportation Article and the State Finance and Procurement Article as authority for the regulation. Specifically, §§ 14-301 through 14-308 of the State Finance and Procurement Article require the department and other units of State government to implement the MBE program. In addition, § 2-103(b) generally authorizes the Secretary of Transportation to adopt regulations to carry out the provisions of the Transportation Article. These provisions include § 2-103(h), which authorizes the Secretary to contract for “services, supplies, construction, and maintenance” in accordance with the State budget and Division II of the State Finance and Procurement Article, which includes the MBE program. This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation is technical and updates existing regulations to reflect the most recent changes to the Maryland Minority Business Enterprise Program Manual. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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