

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 1412 (Delegate Dobson. *et al.*)

Commerce and Government Matters

Procurement - Minority Business Enterprise Participation

This bill increases the minimum percentage from 14% to 30% of the total dollar value of procurement contracts made directly or indirectly from minority businesses that a unit of State government is to try to achieve. The bill decreases the amount of a Maryland Department of Transportation (MDOT) construction contract that is negotiated competitively and not subject to provisions of law regarding minority business enterprise goals from \$100,000 to \$50,000. The bill sets a goal of 5% participation by specified minority groups of the 30% minority participation. Each unit must structure procurement procedures to achieve the bill's specified results.

The bill extends the sunset for the State minority business enterprise (MBE) participation program from July 1, 2000, to July 1, 2001. The bill also extends the date by which the MBE Office in MDOT, as certification agency, must report to the Legislative Policy Committee standards from September 30, 1999, to September 30, 2000, on: (1) the program's compliance with federal Constitutional and statutory standards; and (2) methods that can be used to address the needs of minority businesses.

The bill is effective July 1, 2000.

Fiscal Summary

State Effect: Potential increase in procurement costs as less work is performed by prime contractors. Extending the sunset provision will not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Except for real property leases, each unit of State government is required to structure its procurement procedures to try to achieve at least 14% direct or indirect MBE participation under Maryland's MBE participation program. For construction contracts, the goal is 14% of the unit's total dollar value. The goal applies only to contracts exceeding \$100,000 for MDOT. To qualify for participation in the procurement program, an MBE must be at least 51% owned by a socially or economically disadvantaged group and be certified by MDOT.

Background: An MBE that has reached or exceeded a certain gross revenue average or employee population may not participate in the State's MBE program, although the business will remain certified. These participation levels are specified in federal regulations and vary by industry sector. An MBE that continues to exceed the revenue and employee standards for more than three years has graduated from the program and will no longer be certified. An MBE that falls below the threshold level during this three-year period may resume participation as a certified MBE if the business goes through the recertification process.

In fiscal 1998, the latest year for which data are available, the MBE participation level for State procurement was approximately 20.4%.

Under *City of Richmond v. Croson*, 488 U.S. 469 (1989), a state's MBE program must be narrowly tailored to remedy that state's past discrimination.

State Expenditures: Minority participation goals are often met through subcontractor work. Raising MBE participation goals could increase the amount of work performed by subcontractors. As less work is performed by the prime contractor, contract costs could increase.

Funding for MDOT's MBE Office would continue at current levels. The proposed fiscal 2001 budget contains approximately \$1.17 million, including approximately \$200,000 in reimbursable funds and approximately \$970,000 in Transportation Trust Funds, for MDOT's MBE Office. The MBE Office performs certifications for both the State's MBE program and the federal Disadvantaged Business Enterprise (DBE) program. Federal Department of Transportation matching funds for many MDOT projects are contingent on meeting DBE participation goals.

Small Business Effect: It is assumed that most State contractors are small businesses. Minority owned small businesses could have an increased share of State procurement contracts.

Additional Information

Prior Introductions: None.

Cross File: SB 808 (Senator Conway, *et al.*) - Economic and Environmental Affairs.

Information Source(s): Maryland Department of Transportation, Department of Budget and Management, Department of General Services, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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